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Docket No. 24457

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# United States Court of Appeals

## FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
*Appellee,*

—against—

JAMES W. MILLER,
*Defendant-Appellant.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**S. D. N. Y. File No. C-146-97**

## APPELLANT'S APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

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# United States Court of Appeals

## FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

—against—

JAMES W. MILLER,

Defendant-Appellant.

**S. D. N. Y. File No. C-146-97**

---

## Statement Pursuant to Rule 15(b)

The indictment was filed in the Southern District of New York on December 21, 1954, containing three counts charging the defendant with the crimes of making false and fraudulent statements in a matter within the jurisdiction of the Fiscal Service of the United States Treasury Department, 18 U. S. C. §1001. On January 17, 1955 the defendant pleaded not guilty and was admitted to $10,000.00 bail. A motion filed on June 2, 1956 to dismiss Counts I and II of the indictment, or in the alternative for a bill of particulars, was denied as to dismissal of said counts of the indictment, and granted and denied in part as to the bill of particulars, by order filed June 26, 1956. Trial was held from October 17, 1956 to November 2, 1956 before Hon. Lawrence E. Walsh and a jury. On November 2, 1956 a verdict of guilty on all three counts was rendered, and defendant was continued in bail. On November 30, 1956, defendant's motion for

*Statement Pursuant to Rule 15(b)*

judgment of acquittal or in the alternative for a new trial was denied and he was sentenced to a term of five years to cover all three counts to run concurrently, and judgment of conviction was filed. The District Court granted bail in the same amount pending appeal on condition that the appeal be perfected and appellant's brief be filed by January 15, 1957. Notice of Appeal was filed on December 5, 1956, and the record on appeal was docketed in the Court of Appeals on January 7, 1957.

## Indictment

(1631)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

No. C 146-97

UNITED STATES OF AMERICA

—against—

JAMES W. MILLER,

Defendant.

On or about December 26, 1951 at the Southern District of New York, James W. Miller, the defendant herein, in a matter within the jurisdiction of a department of the United States, namely, the Fiscal Service of the United States Treasury Department, did unlawfully, wilfully and knowingly make a false and fraudulent statement as to a material fact to the effect that a quantity of bonds in the names of members of the Nat Chernoff family were properly cashed in accordance with procedures laid down by circular letter of the United States Treasury Department, whereas in truth and in fact as the defendant then and there well knew, the said bonds were not properly cashed in accordance with procedures laid down by the said circular letter. (Title 18, Section 1001, United States Code).

COUNT II

The Grand Jury further charges:

On or about April 4, 1952, at the Southern District of New York, James W. Miller, the defendant herein, in a matter within the jurisdiction of a department of the

United States, namely, the Fiscal Service, of the United States Treasury Department, did unlawfully, wilfully and knowingly (1632) make a false and fraudulent statement as to a material fact to the effect that a quantity of bonds in the names of members of the Nat Chernoff family were properly cashed in accordance with procedures laid down by circular letter of the United States Treasury Department, whereas in truth and in fact as the defendant then and there well knew, the said bonds were not properly cashed in accordance with procedures laid down by the said circular letter. (Title 18, Section 1001, United States Code).

COUNT III

The Grand Jury further charges:

On or about June 4, 1952, at the Southern District of New York, James W. Miller, the defendant herein, in a matter within the jurisdiction of a department of the United States, namely, Fiscal Service of the United States Treasury Department, did unlawfully, wilfully and knowingly make and cause to be made, a false and fradulent statement as to a material fact to the effect that one Irving Mishel introduced a person to the defendant, James W. Miller, as Mr. Chernoff, whereas in truth and in fact as the defendant then and there well knew, he did not introduce any person to the defendant as Mr. Chernoff. (Title 18, Section 1001, United States Code).

.....

J. EDWARD LUMBARD,
United States Attorney.

.....

Foreman

## Judgment and Commitment

[SAME TITLE]

(1704)

On this 30th day of November, 1956 came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by a jury, of the offense of unlawfully, wilfully and knowingly making false and fraudulent statements as to material facts in matters within the jurisdiction of the Fiscal Service of the United States Treasury Department. (Title 18, Sec. 1001 USC) as charged in counts 1-2-3 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years on counts 1, 2 and 3 to run concurrently. Bail fixed in the same amount pending appeal on condition that appeal be perfected, and appellants briefs be filed by January 15, 1957.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LAWRENCE E. WALSH,
United States District Judge.

**Government's Exhibit 22**

December 26, 1951

Mr. E. F. Bartelt
Fiscal Assistant Secretary
Treasury Department
Fiscal Service
Washington 25, D. C.

Dear Sir:

We have your letter of November 16, 1951, regarding the payment by our Bank of fifty-nine savings bonds bearing the names of various members of the Nat Chernoff family at the total redemption value of $6,684.50.

At the time the investigation was made by your Department we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against us. We note the several matters listed in the second paragraph of your letter as being disclosed by your investigation, but call your attention to the fact that item (2) is incorrect according to the information that we have and which was given to and confirmed by your investigators.

Under the circumstances we believe that we should be granted relief from liability for the loss resulting from the erroneous payment.

Very truly yours,

JAMES W. MILLER
President

JWM:ed

## Government's Exhibit 23

April 4, 1952

Treasury Department
Fiscal Service
Chicago 54, Illinois

Attention: Mr. Chas. D. Peyton
Deputy Commissioner in Charge

Gentlemen:

We have your letter of March 11th requesting reimbursement on account of alleged erroneous redemption of United States savings bonds bearing the names of various members of the Nat Chernoff family in the amount of $6,684.50. Reply has been delayed because of the overlapping absences of our attorney and the writer.

We regret that you are insisting on reimbursement because we feel that these bonds were cashed in good faith and within the meaning, letter and spirit of Paragraph 4 of the Treasury Department's Circular covering such redemptions dated December 19, 1947. When you originally called this matter to our attention we notified our bonding company, but subsequently informed them that the investigation made by your Department indicated that the bonds were properly cashed in accordance with the procedure laid down in your official circular as advised in our letter to you dated December 26, 1951.

We are again filing claim under our Banker's Blanket Bond and will make reimbursement as soon as this matter is processed by the bonding company.

Very truly yours,

JAMES W. MILLER
President

JWM:ed
bc: Toplis & Harding Inc.
R. A. E. Herbhold & Co., Inc.

## Government's Exhibit 24

DORFF & LEVY
8 West 40th Street
New York 18, N. Y.

June 4, 1952.

Mr. E. F. Bartelt, Fiscal Assistant Secretary,
Treasury Department, Fiscal Service,
Washington, D. C.

Dear Sir:—

Our client, The Pennsylvania Exchange Bank of New York City has turned over to us its file regarding the cashing of certain U. S. Savings Bonds bearing the names of various members of the Nat Chernoff family at the total redemption value of $6684.50. We have read this file very carefully and we have also interviewed Mr. Miller, the president of the bank. We also note from the file that this matter has been reviewed by you. We are wondering whether or not all of the facts in the matter have been presented to you because, from the facts as we learned them, and applying Paragraph 4 of the Treasury Department circular of December 19, 1947 outlining the procedure for cashing E bonds, we find it difficult to deduct the basis of your claim for reimbursement.

We have been advised that a person came into the bank with a depositor of the bank, one Irving Mishel. This person signed the bonds in the presence of a teller of the bank and asked the teller to redeem the bonds. The teller asked for identification and Mr. Mishel, who was with that person, told the teller that Mr. Miller knew Mishel and that he was identifying the person as the payee named in the

*Government's Exhibit 21*

bonds. Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was; Mr. Mishel introduced that person to Mr. Miller as Mr. Chernoff, the man in whose name the bonds were registered.

We want to bring to your attention at this time that in view of the fact that Mr. Mishel had been a depositor of the bank for upwards of four years and that his transactions up to that time had been satisfactory to the bank and that Mr. Miller accepted, and had a right to accept, the identification of the person who claimed he was Mr. Chernoff, that such identification satisfied completely the requirements laid down by the Treasury Department for the cashing of these bonds. It seems to us that no better identification could be made than having somebody who is well known to the Bank officer identify the person as the one named in the bonds. Such identification, in our opinion, is superior to identification based on automobile registration, license, creditcards and other methods of identification of the same type.

We therefore respectfully ask you to have the matter reconsidered and if you deem it advisable to investigate further, we would welcome same and cooperate with you to the fullest extent. Incidentally, Mr. Miller testified before the Grand Jury regarding the theft of these bonds and we have been informed that the person who cashed the bonds was subsequently indicted.

Anticipating your cooperation and hoping to hear from you as to what further action you deem necessary, we are

Very truly yours,

IAL:ftm

## Testimony

(61) • • •

NAT CHERNOFF, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Chernoff, what is your occupation? What business are you in? A. Manufacturer.

Q. Is that your own business? A. Yes, sir.

Q. And how long have you been in that particular business? A. Close to twenty years, sir.

Q. Under what name is it going now? A. Madest Underwear Company.

(62) Q. What is known by another name in 1946? A. No, sir.

Q. It was the same name in 1946? A. The same name.

Q. Sometime in May of 1946, were 59 United States Savings Bonds stolen from your business premises? A. Yes.

Q. Where was your business located at that time? A. 395 Stone Avenue, Brooklyn.

Q. What type of bonds were they? A. Registered bonds.

Q. And can you recall in whose names the bonds were registered? A. Yes, Nat and Blanche Chernoff, Marilyn Chernoff, David Chernoff, and Stephen Chernoff.

(63) Q. Now what relationship do David, Marilyn and Stephen Chernoff bear to you? A. My children.

Q. And in 1946, at the time these bonds were stolen, how old were those children, do you recall? A. Marilyn was ten years old. David was seven. And Stephen was two.

Mr. Hallinan: May we have these marked.

(Government's Exhibits 1 through 8 marked for identification.)

Q. Now, Mr. Chernoff, I show you Government's Exhibits 1 through 8 for identification and I ask you if these are photostatic copies of the 59 bonds that were stolen from you back in 1946? A. (After examining) Yes, sir.

Q. Now will you look on the backs of the various bonds and tell me whether or not the signature on the back is in your handwriting or in the handwriting of any member of your family? A. (After examining) None of those signatures on the back of those bonds are any of my family or my own.

Q. Have you ever had an account at the Pennsylvania (64) Exchange Bank in Manhattan? A. No, sir.

Q. Have you ever been in that bank? A. No, sir.

Mr. Hallinan: You may inquire.

Mr. Rosenblum: No questions, Mr. Chernoff. Thank you.

The Court: Thank you, Mr. Chernoff.

(Witness excused.)

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EUGENE PAUL AREY, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Mr. Hallinan: Your Honor, I have a small problem. This witness is going to testify with respect to a diagram that he drew for me of the Pennsylvania Exchange Bank, and I have it resting on that (indicating), and it looks a little too large to fit into it. The problem is where to fit it so that we can——

The Court: Why don't you get it authenticated and then we will worry about where to put it.

Mr. Gallinan: I think I had better have it (65) marked first.

If your Honor please, I made a slight miscalculation of the order of my exhibits, and rather than confuse my list I would like to have this marked 12. There is a gap. But I don't think there will be any objection.

Mr. Rosenblum: No.

The Court: All right.

(Government's Exhibit 12 marked for identification.)

Q. Now, Mr. Arey, by whom are you employed? A. Federal Bureau of Investigation.

Q. In what capacity? A. I am an exhibits expert or specialist.

Q. How long have you been employed by the Federal Bureau of Investigation? A. 14½ years.

Q. And during that period of time have you always served in this capacity that you have just told us about? A. Yes, sir.

Q. Now would you tell the Court and jury, please, just give a brief description of what your duties require? A. Well, I prepare graphic presentations, such as (66) maps, charts, graphs, diagrams, anything that would prove to be a visual aid to a court trial or pretrial preparation.

Q. You have to keep your voice up. Now did there come a time when the United States Attorney for the Southern District of New York, through me, called upon you to draw a diagram of the Pennsylvania Exchange Bank at the 20 West 48th Street branch? A. Yes, sir.

Q. And when did you make that diagram, or when did you start working on it? A. August 23, this year.

Q. And what did you do on that day? A. I proceeded to the bank and took measurements myself of the main floor, complete measurements of the entire first floor.

Q. Did you work there on the following day, August 24th? A. Yes; I returned on the following day to take a few more measurements that we didn't have time for the first day.

Q. Did there come a time when, based upon your measurements and calculations, you did prepare a diagram (67) of that branch of the Pennsylvania Exchange Bank? A. Yes, I did.

Q. Now I show you Government's Exhibit 12 for identification and ask you if that is that diagram? A. Yes, sir, it is.

The Court: You shouldn't face it to the jury until you have gotten it in.

Mr. Hallinan: Well, at this particular time then I will offer this exhibit in evidence merely for demonstrative purposes.

Mr. Rosenblum: May I just take a look at it? I haven't seen it.

Mr. Hallinan: Certainly.

Mr. Rosenblum: May I ask a question of the witness?

The Court: Certainly.

By Mr. Rosenblum:

Q. Mr. Arey, this is just a floor plan, isn't it? A. Yes, sir.

Q. You haven't marked off any places where furniture would be? A. No, I only chartered stationary things; any desks, chairs, I didn't chart anything that could (68) be moved.

Q. Will you tell us whether or not there were chairs

on either side of this railing? You have a railing 3 feet 7 inches high. Of course you would only be able to tell us what you saw in 1956. You wouldn't know— A. That is true. I believe there were chairs, but nothing of that nature was chartered.

Mr. Rosenblum: Subject to checking as to accuracy, just in case an error had been made——

The Court: All right.

Mr. Hallinan: I don't know what that means, your Honor. He has to check through this witness as to accuracy.

The Court: Well, I will receive it.

Mr. Rosenblum: I will say I have no basis now to believe that there are any errors. I merely say if there should be any error, if it comes to my attention, I want an opportunity to bring——

The Court: Certainly. You are not precluding yourself. But we will receive this exhibit.

Mr. Rosenblum: That is right.

(Government's Exhibit 12 for identification received in evidence.)

(69) Q. Mr. Arey, starting with the entrance to the bank on that particular diagram, will you describe briefly for the Court and jury the areas that are represented in that diagram? A. Yes, sir.

Q. I think the best thing is for you to step to the right of the exhibit and point out the areas. A. The only entrance to the bank is here at West 48th Street (indicating). There are two sets of glass swinging doors. Proceeding to the right, as you enter over here (indicating), there is a glass counter for writing purposes, and that glass counter is 3 foot 6½ inches from the floor.

Proceeding father down on the right-hand side, we

have the tellers' cages, of which there are nine positions, there are nine sections (indicating). The highest point of the teller cage is 4 foot 2½ inches from the floor.

Proceeding on back, we have a partition extending across——

Q. Excuse me. Prior to proceeding, will you describe to the Court and jury what you observed when you made that diagram. When you say tellers' cages, what actually is there? (70) A. There is an outer ledge here (indicating) that is 3 feet 6½ inches, and then it is built up in the center section 8 additional inches (indicating). Then it drops off in back to a working area that each teller uses (indicating). These lines here (indicating) separate the different positions that they work at.

Q. Does it correspond to the jury ledge not in height, but the jury ledge that I am now indicating (indicating), or does it have cages above that level? A. No, the highest point is a flat area. If you wish to use this as an example, it would be an outer ledge off this side (indicating) with the tellers back here (indicating) and their work area as at a level down below with a section separating each position, but nothing above this level (indicating). That is the 4 feet 2½ inches.

The partition that runs across this section of the back (indicating) has windows in it. There is a window here (indicating) and a large window here (indicating) and a window there (indicating) or clear glass.

The Court: I think the record should be clear you are speaking now about the rear section.

The Witness: The rear section, yes.

There is glass all the way across, but the (71) rest of the glass is translucent; but the three sections in the lobby area of the bank are clear glass.

There is a low swinging door at this point (indicating) that is 3 feet 7 inches high, and then

coming back towards the front of the bank (indicating), there is a railing that extends from the partition all the way down to the main entrance with three open sections (indicating), walk-in areas (indicating) into an office area that extends from the partition to the front of the bank on the left-hand side of the building (indicating).

In back of the partition and to the right of the bank (indicating), there are three rest rooms, three toilet areas (indicating), and then back farther off that aisleway is a room used for storage (indicating).

To the left of that (indicating), and more or less in the center of the bank, is the vault room with the vault door facing the front of the bank.

Off the left of the vault, there are two small rooms that are completely enclosed. They are approximately 3 by 3½ feet in area. These two small rooms have a writing table.

Coming back into the main lobby, I overlooked this; there is a writing counter that surrounds a column that extends to the ceiling (indicating). This is a clear (72) glass writing counter, which is 3 feet 6½ inches high.

In back of the two small rooms off the vault, there is another storage area (indicating), and in the back left-hand corner of the bank, there is a large office (indicating).

There is a door that extends back into this (indicating). I believe there is a staircase, but I didn't chart that as I didn't go back in this area. The same with these two open areas here (indicating). There are staircases in here (indicating). I didn't go into those sections.

Q. Did you tell us how high the partition is separating the lobby from the space where the desks are or the other

space to the left of the lobby? A. The railing is 3 feet 7 inches high.

Q. And is it similiar to the railing where the tellers sit in that it is also above that? A. That is correct. It is 6 inches wide, very similar to the jurors' railing here (indicating). It is 6 inches; it extends the entire length from the partition to the front of the building, 3 feet 7 inches high.

Mr. Hallinan: Very well. You may inquire.
Mr. Rosenblum: No questions.

By the Court:

(73) Q. That partition in the back, where you said there was a swinging door 3 feet or so high. A. Yes.

Q. Does that partition go all the way to the ceiling? What is on top of the low swinging door, just an open space, or what? A. Your Honor, the partition itself extends to the ceiling from this point (indicating) to the extreme right of the building. All the way over to this dark mark right here (indicating). The small area, which is about 1 foot, right in there to the right of the swinging door (indicating), is the same height as the railing, 3 foot 7. The door itself is 3 foot 7, and it continues all the way around. The full wall partition picks up again to the left of the railing.

Q. Are there any full wall partitions in front of that except those that you have got marked with solid black lines? A. That is correct. Outside of the outer walls, this is the only full wall partition. Back in the rear of the bank, the solid lines represent walls to the ceiling.

Q. And the solid small lines in front of the bank, are they ceiling-height walls, these lines through here (74) (indicating)? A. Yes. To clarify one thing, this line

across the front of the building here (indicating), this is window display ledge for signs that can be read from the street area.

Cross-examination by Mr. Rosenblum:

Q. Mr. Arey, you said certain walls extend to the ceiling in the bank. Is the ceiling at the back the same height as the ceiling in front of the building? A. No, sir, it is not.

Q. So when you say extend to the ceiling, you mean in fact it extends to the ceiling which is the floor of the mezzanine, is that right? A. That is correct. There is an overhanging mezzanine that picks up approximately here (indicating).

Q. So that everything from that point on, where you said "here" would be underneath the mezzanine; and when you said the ceiling, you don't mean the entire height of the bank as indicated by the ceiling in front, but the ceiling which is really the floor of the mezzanine which is over it? A. That is correct.

Q. Is it an open mezzanine? A. An open mezzanine?

(74a) Q. That is, could you look up there? A. From the main lobby?

Q. Yes. A. Yes.

Mr. Rosenblum: That is all.

Mr. Hallinan: That is all.

(Witness excused.)

(75) IRVING MISHEL, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Mishel, where are you presently residing? A. The Federal House of Detention.

Q. Is that on West Street, New York City? A. Yes, sir.

Q. Now have you ever been convicted of a crime? A. Yes, sir.

Q. In 1945 did you plead guilty to the charge of felonious assault? A. I did.

Mr. Rosenblum: May the witness not be led?

Mr. Hallinan: Oh, I will put a direct question to him.

The Court: All right.

Q. Will you tell the Court and jury, please, what other convictions you have, Mr. Mishel? A. In 1945 I was convicted for felonious assault.

Mr. Rosenblum: Keep your voice up, please, Mr. Mishel.

Q. I would like you to keep your voice up.

(76) The Court: Talk to the last juror over there.

A. In 1945 I was convicted of felonious assault, in the Bronx. I received six months' suspended sentence.

In 1953 I was convicted in New York County, Court of General Sessions, of forgery and grand larceny. I received 10 to 20 years.

Q. Are you presently serving that sentence? A. Yes, sir. At that time I also received five years from the

United States Government for transporting some stolen bonds in the western part of Virginia.

I also received a suspended sentence in 1955, I believe, Bronx County Court, for grand larceny.

Q. All right. Now you will have to continue to keep your voice up so that everyone can hear you.

Do you know a person by the name of Irving Mickey Rosenberg? A. I do.

Q. Do you know a person by the name of Frank Race? A. I do.

Q. When did you first meet Frank Pace? (77) A. Sometime in '49, I believe it was about September '49.

Q. Who was with you when you first met Mr. Pace? A. Irving Mickey Rosenberg.

Q. And what was the purpose of that particular meeting? A. About some bonds that Frank Pace had.

Q. What kind of bonds? A. Some stolen bonds that we were to negotiate.

Q. Now do you recall some time around that same period receiving from Frank Pace some stolen bonds? A. I do.

Q. Do you remember what type of bonds they were? A. Series E Bonds.

Q. Were they registered bonds? A. Yes, I believe they were registered in the name Nat Chernoff and his family, some other members of the Chernoff family.

Q. Now, was Mickey Rosenberg with you when you received those bonds? A. He was.

Mr. Hallinan: Will you mark that Exhibit 9, please.

(Government's Exhibit 9 marked for identification.)

(78) Q. I show you Government's Exhibit 9 for identification and ask you if you know the individual repre-

sented by that photograph? A. Yes. This is Mickey Irving Rosenberg.

Mr. Hallinan: The Government offers Government's Exhibit 9 (handing to Mr. Rosenblum).

No objection?

Mr. Rosenblum: If I have an objection I will say it.

The Court: (To Mr. Hallinan) Do you want it taped on both sides? The paper is loose on the back.

Mr. Hallinan: Oh yes. I didn't notice that. Thank you, Judge.

(Government's Exhibit 9 for identification received in evidence.)

Mr. Hallinan: I should like to circulate it among the jury, your Honor. It won't take long.

The Court: All right.

(Mr. Hallinan hands Government's Exhibit 9 to the jury.)

Q. Now, Mr. Mishel, I show you Government's Exhibits 1 through 8 for identification and I ask you if these are photostatic copies of the bonds that you received from—

(79) Mr. Rosenblum: May I object to any leading questions, just like the other one, "Was Rosenberg with you?" Let him ask the question and we will get the answers.

The Court: Yes.

Mr. Rosenblum: I object to any leading questions at this time of this witness.

The Court: Ask him if he has seen them before.

Q. I show you Government's Exhibits 1 through 8 for identification and ask you what they are? A. These are the Series E bonds that I received from Frank Pace.

Mr. Rosenblum: I can't hear the answer.
(Answer read.)

Q. Are these exhibits you have just identified, are these the exact bonds that you received? A. Yes, sir.

Q. Or are they photostatic copies of those bonds? A. Those are photostatic copies of the bonds.

Q. Now, Mr. Mishel, do you know the defendant James W. Miller? A. I do.

Q. Would you point him out for the Court and jury, (80) please? A. That is him over there (indicating).

Mr. Hallinan: May the record indicate that the witness has identified the defendant.

Q. When did you first meet the defendant? A. Sometime in 1946 or 1947.

Q. You have to keep your voice up. How did you happen to meet him? A. I was introduced to him by an attorney.

Q. What was that attorney's name? A. Irving M. Luria.

Q. And what was Mr. Miller's occupation at the time you met him? A. Mr. Miller was the president of the Pennsylvania Exchange Bank.

Q. Around the same time that you met Mr. Miller, did you meet any other official of the bank? A. I did.

Q. Who was that? A. Mr. Gallagher.

Q. What was his full name? A. William Gallagher.

Q. Now, some time after you met Mr. Miller and Mr. Gallagher, did you have occasion to be in Mr. (81) Gallagher's office? A. I was.

Q. And who was present with you at that time? A. Mr. Gallagher, Mr. Miller and myself.

Mr. Rosenblum: May I ask that the "some time" referred to in the question be expanded as to just what that means? Some time after, it may be a year.

The Court: Yes. The approximate date.

Q. Can you recall when that happened, Mr. Mishel? A. Sometime in 1947 or '48 this happened.

Q. Now, was there a conversation at that time? A. There was. There was.

Q. Will you tell us what that conversation was, please? A. Mr. Gallagher was talking to me and Mr. Miller walked into the room, so Mr. Gallagher said, "Jim, this Mishel here is with very good people and anything you do for him don't worry about it; do anything you want with him, whether it be legal, illegal or anything, go along with him, and if I am not here do it just as if I was here."

Q. Now, after this conversation did you open up certain accounts at the Pennsylvania Exchange Bank? (82) A. I did.

Q. Will you tell us what type of accounts those were? A. They were stiff accounts.

Q. Mr. Mishel, what is a stiff account? A. They were phony accounts in fictitious names. We were using them for our check-cashing business.

Q. What kind of check-cashing business? A. Well, we were cashing checks for bookmakers, hoodlums, wise guys, and all black marketeer people.

Q. Did you ever discuss with Mr. Miller the opening of these stiff accounts? A. I did.

Q. Do you recall when that was? A. I discussed it many times.

Q. Do you recall when the first time was? A. Some time '47 or '48, or maybe later.

Q. Do you recall the substance of the first conversation you had with him with respect to the opening of these stiff accounts? A. I recall part of the substance; I don't recall it all.

Q. What was the part that you recall? (83) A. Well, he said we could open the accounts if they wouldn't run too long, he said a month or two, and then close them out and open another one. So that was the conversation.

Mr. Rosenblum: We cannot hear the witness.

The Court: Try to speak louder.

The Witness: May I have a little water?

The Court: Surely.

The Witness: Thanks very much.

Mr. Rosenblum: May we, if your Honor please, have the date, the conversation date when this witness says this particular conversation took place?

Mr. Hallinan: I thought I asked that, your Honor. He placed it some time in 1948——

Mr. Rosenblum: May I suggest——

Mr. Hallinan: If you have any objection——

Mr. Rosenblum: I do.

Mr. Hallinan: —ask for the record to be read.

Mr. Rosenblum: I just asked may the witness now again state, if he stated it before, when the first conversation took place, or give the approximate date if he doesn't know the exact date.

(83a) The Court: I think if you read the next to the last answer we will have it.

Mr. Rosenblum: There may be something I didn't hear because his voice was so low.

(Record read.)

(84) Will you now give us the part, Mr. Mishel, that you do recall? A. I recall opening those accounts. Whether it be 1947, 1948, or 1949, I am not sure——

Q. I will——

Mr. Rosenblum: Go ahead, Mr. Mishel.

Mr. Hallinan: No, don't go ahead, Mr. Mishel.

Mr. Rosenblum: I object to the witness being cut off when he is making an answer to a question by Mr. Hallinan. I don't think the attorney has a right to cut his answer at any point he wants to.

The Court: Will you read the question and answer?

(Question and answer read.)

Mr. Hallinan: I am asking for the substance of the conversation.

The Court: Give us the parts of the conversation you remember.

The Witness: I remember Mr. Miller saying to me that we should open the accounts but they couldn't run too long as we were cashing checks in those accounts, and they ran maybe 150 or 200,000 per month, and that would look bad for the bank examiners. So he told me when I opened the accounts, open them at the beginning (85) of the alphabet and the ending of the alphabet so if the examiners do come in, all they would pick up would be one account, and I received from Mr. Miller these opening account cards. I opened the accounts——

Q. Do you recall anything else that was said at that time? A. Oh, yes. We agreed upon a price for opening them.

Q. What was that? A. $150 a month per account with the understanding that any time they asked us, we will close them and they will open up new ones, and when things get hot, as he put it, we may not be able to cash any checks through the bank.

Q. Did you thereafter open up various stiff accounts? A. I did.

Q. And pursuant to what you have just told us, did you from time to time pay Mr. Miller? A. I did.

Q. Will you tell the Court and jury how you would pay him? A. Well, I would send one of my messengers up to the bank to make some deposits of checks in these (86) stiff accounts, and at the same time I would say, "Here is some money," and I would put it in an envelope and seal it and say, "Give it to Mr. Miller."

Q. Do you recall who those messengers were? A. I used to send one boy in particular, Sam Siegel, who worked for me, and another boy by the name of Norton Schnabel.

Q. Was there anyone else? A. Sometimes I brought it up myself.

Q. Was there anyone else? A. Once in a while I would send Mickey Rosenberg up with money and deposits also.

Q. Can you recall the names of some of these stiff accounts? A. I could try—John Case, Sam Marco, Thomas Young, Abe Katz, John Whitman, Jack Feinman, Thomas Young, S. H. Newman. I don't recall any more.

Q. Will you tell us how the Thomas Young and John Case stiff accounts were opened? A. That was in my office at 577 Seventh Avenue, which I shared with some lawyer and Sidney Hack, who is a friend of mine and was partners with me at the time in Mishel Wine and Liquor Corporation, a store at 2960 Third Avenue in the Bronx. He was in the office and (87) I said to Sidney, "Sidney,

put on this card John Case," and I said, "Put on this one Thomas Young," which he did, and I gave him a book of blank checks of the Pennsylvania Exchange Bank, and I said, "Sign each one John Case and on the back of them endorse John Case," and I asked him to sign another book Thomas Young and endorse the book Thomas Young, those blank-checks, which he did.

Q. What else did Sidney Hack, if anything, put on the signature cards? A. Nothing at all.

Q. What did you do with the signature cards thereafter? A. I took those signature cards with some checks which we had for deposit from our check cashing business, which was on 38th Street, and I brought them up to the bank and I had one of the boys in the office, before I went to the bank, endorse Thomas Young on some of the checks and make out a duplicate deposit slip for it—that is, two of them, one after another, and the same thing in the name of John Case—and I brought them up to Mr. Miller and I said, "Open this account in John Case's name. Open this one in Thomas Young's name."

He said to me, "Give me some addresses."

(88) So I gave him the address on 38th Street of our cigar store and I gave him the address on Seventh Avenue of a place we were using to book horses; 515 Seventh Avenue I believe is the address.

Q. Did Mr. Miller know that these two were stiff accounts? A. Yes.

Mr. Rosenblum: I object to the form of the question.

The Court: Objection sustained.

Mr. Rosenblum: May the answer be stricken?

The Court: Yes.

Q. Did you say anything else to Miller with respect to these two signature cards and the accounts? A. I did. I said to him, "Here are two stiff accounts to be opened. They will be opened in a few weeks." And he opened them.

Q. What condition were the signature cards in when you handed them to Mr. Miller? A. Signature cards were just with John Case's signature on it and Thomas Young's signature on it, nothing else.

(Government's Exhibits 10 and 11 marked for identification.)

(89) Q. I show you Government's Exhibits 10 and 11 for identification, and I ask you what they are (handing). A. These are the individual signature cards that I had Sidney Hack sign Thomas Young on this one (indicating), and this is the one that he signed John Case on, this one (indicating).

Q. Except for that, you said they were in blank when you handed them to Mr. Miller? A. Yes.

Mr. Hallinan: The Government will offer Government's Exhibits 10 and 11 in evidence.

Mr. Rosenblum: There were initials on the back of these, and I just felt that it should not be on there and Mr. Hallinan agrees.

Mr. Hallinan: May the record indicate that that is what I am now erasing from Government's Exhibits 10 and 11.

(Government's Exhibits 10 and 11 for identification received in evidence.)

Mr. Hallinan: May I pass these among the jury, your Honor?

The Court: Yes.

(Government's Exhibits 10 and 11 were shown to the jury.)

(90) Q. Mr. Mishel, when you received from Frank Pace Government's Exhibits 1 through 8 for identification, what did you do with them? A. I took them to the bank. I showed them to Mr. Miller and asked him if he could cash them.

Q. Will you keep your voice up? A. I took them to the bank. I showed them to Mr. Miller, and I asked him if he could cash them. He looked at them and he says, "Yes." He says, "I can cash them. Have somebody sign them." I said, "Fine, I will bring them back tomorrow signed."

Q. What did you do thereafter with the bonds? A. Thereafter I called Mickey Rosenberg on the phone and I said to Mickey, "Meet me in the morning. I have some bonds I want you to sign for me." Mickey said, "O. K." and he met me the next morning.

Mr. Rosenblum: May I request that the date be fixed of the two occurrences he has just described? He is talking to Mr. Miller on one day and then talking to Mr. Rosenberg the next.

The Court: Fix the date if you can.

Q. Do you recall the date when you first talked with Mr. Miller about the bonds?

I show you——

(91) Mr. Rosenblum: I didn't hear the answer.

Mr. Hallinan: It is quite obvious he has not made an answer. I am going to refresh his recollection.

The Court: Read the question.

(Question read.)

The Witness: About which bonds?

Q. The Chernoff bonds. Do you recall? A. Yes.

Q. What was the date? A. Sometime in December of 1949.

Q. Do you recall the exact date? A. It is seven years ago.

Q. I show you Government's Exhibit 1 for identification and ask you to look at that and tell me whether that refreshes your recollection as to the exact date (handing). A. I recall from this the date of the cashing of it. I don't recall——

Q. What was that date?

Mr. Rosenblum: I think the witness was about to answer.

Mr. Hallinan: He wasn't cut off, Mr. Rosenblum.

Mr. Rosenblum: I think he was.

(92) The Court: Read the answer, and if you want to add to it, you may add to it.

(Answer read.)

The Witness: I don't recall whether it was the day before that I spoke to Mr. Miller or a week before, but I know I spoke to him before that, and I brought them in to be cashed, and at that time, when I showed him the bonds, he gave me some redemption forms, white certificates they are, identification or redemption forms. Then I spoke to Mickey Rosenberg, and I told him to come down to the office in the morning. He says, "Pick me up."

I says, "Fine."

Q. Just one moment, I am interrupting you. The redemption forms you referred to, what form did they come in, if you recall? A. They were a pad, a white pad about this width (indicating), and one side of it like mucilage, like that white pad over there (indicating).

Q. Like the binding on that? A. Not on the book, the other binding over there (indicating), or on the yellow pad over there (indicating).

(93) Q. Now do you recall when you spoke with Mr. Rosenberg? A. Yes, I do. I spoke to him the night before the cashing of these.

Q. So that would be the 28th, would it? A. The 28th, to the best of my recollection; it could have been the day before, but around that time.

Q. Now, I asked you what you had done with the bonds after you had shown them to Mr. Miller and you were relating what happened there and I think you were as far as calling Rosenberg. A. Yes, sir.

Q. Would you continue from there, please. A. I called Rosenberg and I told him, "Listen, Mickey, meet me and I have some bonds for you to sign."

Mickey said, "All right, I will meet you."

So I picked him up 8.15 or 8.30 in front of the Concourse Plaza Hotel, in the Bronx, which was right next door to where I lived.

We went down to my office at 570 Seventh Avenue, New York City. We went in the office and Mickey signed all those bonds in the name of Nat Chernoff, and he signed about a half a dozen of these (94) white redemption forms in the name of Nat Chernoff.

Q. What did you do then with the bonds? A. I then took the bonds, put them in one of those legal type red envelopes we had in the office, and I said to Mickey, "You wait here, I will be back in a little while. I got to go over to Miller."

And I went over to the bank. And I gave the bonds and the redemption forms to Mr. Miller. I says, "Here's the bonds to be cashed."

He looked at them. He says, "They are not properly endorsed. The signatures are not right. They are not signed on the right line."

So I says, "Wait a minute, I will get Mickey and I will have him resign them."

So I leaned across the desk and called my office and I spoke to Mickey. I says, "Come on over to the bank, you signed them wrong."

So he came over to the bank. And I took the bonds from Mr. Miller and I walked towards the back of the bank. There is like a vault, and next to the vault there is two private cubbyholes; one has a telephone and one where you would examine your property if you took it from the vault.

(95) He sat down and started to sign the bonds properly, see, because some of them were not in the name of Nat Chernoff, they were in the name of, I believe, Blanche Chernoff or David Chernoff. So he signed them, he resigned them David Nat Chernoff.

With that, they still weren't signed all properly. And Mr. Miller passed, he leaned over Rosenberg's shoulder, I was half out of the booth. He says, "Don't sign here, sign it here." He says, "And don't sign the redemption form here, sign here."

He then signed them in the proper place with the proper name.

Q. What happened thereafter? A. Thereafter I said to Mickey, "Go back, I will meet you on 38th Street," which we had a check-cashing place.

I took the bonds, put them back in this portfolio and went back to Mr. Miller's desk and gave Mr. Miller the bonds.

Mr. Rosenblum: May we get the date, Mr. Hallinan, of what he has just been testifying to?

The Witness: This date is December twenty, whatever it is on those things, 29th, I believe, 1949.

Q. Would you continue, please? (96) A. He then looked at the bonds, looked at the redemption forms, and

said, "They are all right, I will cash them." He says, "Come back a little while they will be cashed for you."

So I left him all the bonds, redemption forms, and this lawyer's envelope, and I went about my business. I don't recall whether I went for some coffee or not. I came back about a half hour or an hour later.

Q. What happened then? A. He took out $840 and he says, "Here."

I says, "Gee, that isn't what was for the bonds."

He says, "Well, I only cashed one bond," he says, "a thousand-dollar one."

Well, I says, "What about the rest of them?"

He says, "Look," he says, "I have to cash them piecemeal, you can't cash them all at once."

So I said, "Okay."

He says, "Well, take the bonds," he says, "and every couple of days when you come in I will cash them for you."

I says, "Look, it's too much bother for me to carry them around, I trust you, hold on to them."

(97) So I left the bonds and redemption forms and he took them and put them in his drawer.

Q. You have said that Mickey Rosenberg was in the bank on this particular day. To your knowledge did Mr. Miller know Mickey Rosenberg as——

Mr. Rosenblum: I object to that, if your Honor please.

Mr. Hallinan: I don't know how else to ask it.

Mr. Rosenblum: All right, go ahead. I will withdraw my objection.

Q. Did Mr. Miller, the defendant, know Irving Mickey Rosenberg as Irving Mickey Rosenberg? A. He did.

Q. How did he know that? A. Well, many a time I tell him, I sent Mickey up with some checks to be cashed or other work or deposits, and I introduced him, many a

time, Mickey used to be with me quite often when I went in the bank.

Q. Now will you continue telling us what happened with the—you returned some time after Miller told you to return to the bank? A. Yes.

(98) Q. And he had some money. What happened after that? A. Well, he gave me $840. And I said to him, "Well, is this all?"

He says, "Well, this is all for the present."

So I said, "What do I owe you?"

He said, "Well, being a friend of yours whatever you think is fair."

I said, "10 per cent do you?"

He says, "Fair enough."

So I took from the 840 $200 and said, "All right, here, Jim, you take that and as I cash them you will get the same 10 per cent."

Thereafter, I used to be in the bank once in a while, I would stay around for a couple of minutes, there is some bonds being cashed, so I would sit around. Over would come some money. I would give him the money. I would go across the street in the Holland, I think it is Holland House, I am not sure of the name, but something like that, and I straightened out if I had to give him some money there also.

Q. Do you recall over what period of time approximately these bonds were cashed at the bank? A. I believe it was over about six or eight (99) weeks, I am not sure, but I know it was in six, seven, eight, maybe nine transactions. It was piecemeal. If I could see the bonds again I could tell you exactly when they were cashed.

Mr. Rosenblum: May we find out from the witness whether he has any recollection? If he is going to look at a date on a piece of paper, it is not his recol-

lection, I don't think it is good testimony, unless he had a prior recollection which could be refreshed by something. If he has no recollection at all, I think under the rule——

Mr. Hallinan: He just testified that it was approximately seven, eight or nine weeks, I think were his exact words, and he said, "If I could see the bonds I could tell you."

The Court: I will let him look at them. Go ahead.

Mr. Rosenblum: Exception.

May I inquire and see if we can get his recollection?

Mr. Hallinan: No, I don't——

Mr. Rosenblum: Wait a minute. I have a suggestion to make.

May we first ask him as to each one of the (100) bonds if he has any recollection as to each one, and then if he says he has no recollection——

Mr. Hallinan: No. Mr. Rosenblum evidently misunderstood my question. And I don't want to have questions put for me. I am only asking him now if he recalls the period of time over which these bonds were cashed, period.

Mr. Rosenblum: He has already testified to that.

The Court: That is right. And he volunteered that if you were to give him the bonds he will tell you the exact date.

Mr. Hallinan: That is right.

The Court: And Mr. Rosenblum wants you to ask him whether he remembers the exact date. You say you don't want that information.

Mr. Hallinan: Oh no. That isn't the information I didn't want. I will put the question.

Q. Do you remember the exact period of time, the first date and the last date, during which the bonds were cashed? A. I believe it was from December 29, 1950 to the first week in February— I have to withdraw that. It was December 29, 1949 to the first week in February (101) 1950. I believe that was the period of time. But I still would like to see those if you want the exact time.

The Court: Now if you want to show them to him and get the exact date, go ahead.

Mr. Hallinan: Yes, I do, because Mr. Rosenberg has been very concerned with dates.

The Court: Let us just go ahead with the case. You and Mr. Rosenblum——

Mr. Rosenblum: I am not getting concerned.

The Court: —can talk about what you each want at some other time.

Q. Just give us the last date, the inclusive dates during which they were passed. A. February 28 was the last date, 1950, and the first date——

Q. February 28? A. Yes. And the first date was December 29, 1949.

Q. Is that February 20 or 28? A. It looks like 28. It could be 20. It could be the 20th or the 28th; I am not sure. This is seven years ago.

(102) Q. Now can you recall during that period of time a conversation that the defendant Miller had with the guard Peter Kennedy with respect to a teller by the name of Frank Horan? A. I do.

Q. First of all, do you recall what——

Mr. Rosenblum: Let us see if we can't keep leading questions out. If he had a conversation with some other person may we get it from the witness and not have Mr. Hallinan ask whether he

had a conversation with a particular person. If he doesn't know, then he might suggest it to him. I think he should first find out whether he knows of his own independent knowledge and recollection whether he had a conversation with somebody and find out.

Mr. Hallinan: Mr. Rosenblum knows I can't ask the witness if he had a conversation, period.

The Court: He would like you to ask did he have a conversation with a guard, and then get the subject matter.

Mr. Rosenblum: Or with any other person. And then, if he says yes or no, ask him, instead of leading.

The Court: I think we can go ahead on the (103) question that is already put. I think we may as well proceed that way.

Mr. Hallinan: All right.

Q. Do you recall the question, Mr. Mishel? A. Yes.

Q. All right. Can you answer it, please? A. During cashing one set of these Chernoff bonds I was sitting at Mr. Miller's desk when he called Pete Kennedy over and he said, "Pete, give these to the teller to be cashed."

Pete took them over to one of the tellers, Mr. Horan.

Mr. Rosenblum: May we have the date, if your Honor please? He says during the time when one of these sets were cashed. May we have that date?

Q. Mr. Mishel, can you recall the exact date? A. If you show me the sets of bonds that Horan cashed I will recall the exact date for you.

Mr. Rosenblum: I have asked a simple question. He is now giving testimony as to an occurrence.

I think it is proper that the witness be asked whether or not he can give us that date of the conversation he has just referred to.

Mr. Hallinan: I just asked that question.

(104) Q. Can you give us the exact date on which that occurred? A. It was on one of the times that these bonds were cashed.

Q. Can you give us the exact date? A. I can't give you the exact date, but it was on one of the times one set of these eight, nine or ten sets of bonds were cashed.

Q. Will you tell us what was said at that particular time; what happened? A. At that time Mr. Miller pressed a button on his desk and a light lit up, and Mr. Kennedy came over. Mr. Kennedy was the bank guard.

He says, "Pete, take these over to the teller and have them cashed."

I was sitting at Mr. Miller's desk when this took place.

About two or three minutes later Kennedy come back and said that Horan doesn't want to cash these bonds, there is no identification with them.

So he said, "You tell Horan to cash the bonds anyway, that I said to cash them."

Back went the bonds with Pete Kennedy, and back they came again.

(105) And Mr. Kennedy said, "Horan still says he doesn't want to cash these bonds unless he gets some identification." Meaning, I presume——

Q. No, never mind what he meant. Just tell us what happened. A. Yes, sir. So, then, Mr. Miller said, "You tell Frank Horan that I said either he cash those bonds or go in the back and get his hat and coat and go home. I am still the boss here."

Back went the bonds. They were cashed.
Q. All right. A. That is it.

Mr. Rosenblum: I think it is still unfinished. At least we can see the mouth move but we don't know what he said.

The Witness: It isn't the mouth. I have a sore throat.

The Court: He just wants to know whether you completed your answer.

The Witness: Yes.

The Court: Then we will take a brief recess.

The Witness: Yes.

The Court: We will take a five-minute recess.

(Short recess.)

(106) (Government's Exhibits 1a, 2a, 3a, 4a, 5a, 6a, 7a, and 8a marked for identification.)

By Mr. Hallinan:

Q. Mr. Mishel, I show you Government's Exhibits 1a through 8a, for identification and ask you what they are (handing). A. These are the identification forms on the redemption of the Chernoff bonds.

Q. Are these the ones that you testified——

Mr. Rosenblum: I object to the form. It looks like we are going to have a leading question.

Q. What happened to these after they were made out, Mr. Mishel? A. They were taken by Mr. Miller with the bonds, and he used one of them with the cashing of each series of the bonds.

Mr. Hallinan: The Government offers exhibits 1 through 8 and Exhibits 1a through 8a for identification in evidence.

Mr. Rosenblum: If you want to continue with the questioning, to save time I will look at them while you are asking the questions.

Mr. Hallinan: No, the next questions are on these exhibits, Mr. Rosenblum. I will wait.

(107) Mr. Rosenblum: Here you are, Mr. Hallinan (handing).

Mr. Hallinan: There is no objection on behalf of the defendant to the introduction of these.

(Government's Exhibits 1 through 8 for identification and 1a through 8a for identification received in evidence.)

Q. Now, Mr. Mishel, will you please look at Government's Exhibits 1 through 8 in evidence and show us on the backs thereof where Mickey Rosenberg first signed those bonds in your office (handing). A. He signed them on the top line, Nat Chernoff (indicating).

Q. What is printed just below that on the bond itself, just below where that signature appears? A. It is hard to make it out. It says, "I do not hold United States States Savings Bonds of Series E of any denomination originally issued to me during the calendar year in which this bond is issued."

Q. Now read what is printed just above that where the first signature appears. A. "I am the owner of the savings bond and hereby make request for the payment thereof."

Q. Where were the second group of signatures (108) put on those bonds? A. Right on top of "signature of registered owner or other person entitled"—it is very hard to read these—"signature of registered owner or other persons entitled to payment: Signed above"—I just can't make the rest of it.

*Colloquy of Counsel*

Mr. Hallinan: Before proceeding, I should like to circulate these bonds among the jurors. I think we might dispose of that this afternoon.

The Court: All right.

What is the significance of the particular exhibit groupings? Has that been developed?

Mr. Hallinan: No. It just has to do with the particular dates on which they were cashed. They were cashed in eight separate transactions.

Mr. Rosenblum: I would still like to get the witness' version.

The Court: On the face of the bonds themselves, do they show a cashed stamp of a particular date?

Mr. Hallinan: Yes (indicating).

The Court: In other words, you grouped them yourself according to the dates on those bonds.

Mr. Hallinan: Yes.

The Court: All right.

(109) (Government's Exhibits 1 through 8 were handed to the jury.)

The Court: Don't feel you have to hurry on the examination of these. Look at them and see what you want to see. It is just as important to look at the exhibits as it is to listen to the testimony.

Juror No. 3: We will have another opportunity to look at them, won't we?

The Court: The thing to do is look at them when they go by, and if you need further opportunity to look at it, then you will get it. But, by and large, just look at them.

Juror No. 7: Aren't we supposed to also look for the correction that was made on here?

The Court: In the summation of counsel, they will tell you what particularly to look for, but now

at least get as good an idea of the documents as you can so you can follow the testimony with respect to them. And, incidentally, these photostats are not the clearest job that I have seen and you will have certain difficulties as a result of it.

I assume there is nothing in the body of the bonds themselves which you need to read. If there is, counsel will point it out. Otherwise, look at the (110) material that is used to fill in the blanks on both sides of the document.

Juror No. 7: They seem to be all alike.

The Court: I wouldn't comment on them if I were you. Just look at each one as it comes to you.

(The jurors examined Government's Exhibits 1 through 8.)

The Court: Mr. Hallinan, I think tomorrow morning you should call to the attention of the jury, without any arguments or conclusions, the groups by date of cashing, the names of the beneficiaries of the bonds, and show them the signatures that the testimony has referred to, and I think that will make it easier for everybody.

Mr. Hallinan: I think you are right, your Honor.

The Court: Because the text of the bond is of no significance at all here unless there is something you want to call their attention to. I think that is probably the better way to do it. So if we can get the bonds back in one pile, we will have a short review of them tomorrow morning, and you will be able to look at them to your heart's content at some time.

But it is important even to go through a (110a) pile of papers if you don't read them to at least

see where the signatures are and what the form of the documents is.

Then we will resume at 10:30 tomorrow morning. Don't discuss the case with anybody, including the other members of the jury.

(Adjourned to October 19, 1956, at 10:30 a. m.)

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(111)

New York, October 19, 1956;
10.30 o'clock a. m.

Trial resumed.

(The following proceedings were held in open court in the absence of the jury.)

Mr. Hallinan: Your Honor, before the jury is brought in I have two matters I wish to bring up just briefly.

I think there is one correction, first of all, that has to be made in the transcript of this testimony on page 98. About in the middle: "So I took from the $840 the 200." And he testified 100, as is brought out by the rest of the statement. And it appears in here as 200.

The Court: How do you feel, Mr. Rosenblum?

Mr. Rosenblum: I don't recall. Let the witness change that if he wishes to. I don't recall, frankly, his voice was so low at times.

Mr. Hallinan: I don't want to be in the situation of having the witness correct the testimony if it was a mistake of the stenographer, and I (112) distinctly recall that he said a hundred dollars and he said "You get the same 10 per cent."

The Court: I remember the 10 per cent.

*Colloquy of Counsel*

Mr. Rosenblum: Yes.

The Court: I sort of had calculated it myself or recall $84. Probably it was my own jumping to a conclusion. If it should be a hundred dollars and everybody consents we can make it a hundred.

Mr. Rosenblum: I don't know.

Mr. Hallinan: May the record be checked?

(Notes read as transcript reads.)

The Court: Well, we can ask him again.

Mr. Rosenblum: That is right. I think he should be asked.

Mr. Hallinan: The second matter which is pertaining to procedure, and Mr. Rosenblum pointed out this morning and I will very gladly go along with it, your Honor suggested last night, and I thought it is what I should have done originally, really to be able to make it quicker and clearer to the jury, certain things on the bonds, and Mr. Rosenblum has pointed out, and it is true, that certain notations were made on the bonds after they left the hands of (113) Mr. Michel and Mr. Miller by the teller. So I think we should suspend any review of the bonds with the jury until the three tellers have testified, and at that point we will have all of the notations on each bond and each redemption form identified.

The Court: All right. Very good. You are going to call them out of order or are you going ahead?

Mr. Hallinan: No, we will go in the regular order because they have other testimony to give, too, and I won't want to——

The Court: All right. Well, the witness on the stand is not going to testify any more about these documents?

Mr. Hallinan: Yes, to certain notations that he is familiar with, but that is all.

Mr. Rosenblum: My point was, we have a photostat and there is no proof as to whether it is a correct one or it is not a correct one.

Mr. Hallinan: Yes, there is.

Mr. Rosenblum: Wait a minute. The way the question was put and the answer, as I read in the record, indicates that Mishel is saying these bonds that I am now identifying are the bonds in the (114) condition and the shape they were in when I last saw them. It is quite obvious that he didn't mean that. But I still think that if they need additional proof I feel that it ought to be in the record. I pointed out to Mr. Hallinan, on reading the record, I got the distinct impression, not in so many words, but I think Mr. Hallinan is in effect relying upon his testimony to establish that this is a photostat and a copy of the document he had.

(115) The document he had would have to be in the shape it was in for him to testify, if he can say so now, that all those items which appear on there were on there at the time he last saw them.

Mr. Hallinan: That is not quite true. He can testify that these are photostatic copies of the bonds and any further notations I will have identified by the tellers when they take the stand.

Mr. Rosenblum: He has testified up to this moment—it seems as though you are relying on his testimony at this moment to establish——

Mr. Hallinan: I am relying on the testimony of Chernoff and Mishel to establish that these are photostatic copies of the bonds, first of all, that Mr. Chernoff had and that were stolen from him; and, secondly, photostatic copies of the bonds Mishel received. Any further notations that appear there-

on I will have the tellers identify. But basically the document absent those further notations, yes, I rely on.

Mr. Rosenblum: Without those notations, I agree.

Mr. Hallinan: If Mr. Rosenblum has any thought that he is going to make a point over whether or not these are the photostatic copies, I will make available (116) to him, if he requests, the original reels, and I will put on further testimony to show that the original bonds are maintained by the Federal Reserve Bank for six months. Then they are destroyed and Recordaks are made. Your Honor is familiar with Title 28, Section 1732, that makes the Recordak the original thereafter when original business records are destroyed. The Recordak becomes the original. I will make those reels available for Mr. Rosenblum's inspection if he wishes.

Mr. Rosenblum: I don't know that that is the way to do it——

Mr. Hallinan: Yes, it is under the statute.

Mr. Rosenblum: This is a criminal case and you have the responsibility of establishing——

Mr. Hallinan: I realize that.

Mr. Rosenblum: I know you do. I have a duty, too. If you had made these reels available to me before the trial, maybe I would know what I should do.

Mr. Hallinan: They were available before trial.

The Court: Let him finish.

Mr. Rosenblum: We are at a point now where, and I think it is the fact, if you should by some chance not be able to produce certain evidence, I have a right to have that advantage. I am not

going to stipulate in (117) advance, say, at this moment, unless I know exactly what I am stipulating.

The Court: I am not asking you to stipulate anything. You may challenge the accuracy of the photostats as you see fit, but I believe that we have sufficient to go ahead without going into the reels ourselves. The reels should be made available if you want to check them. Whatever further efforts you want to make to probe the accuracy of these photostats, you should be able to do, and reserve any rights in that regard. But I won't require Mr. Hallinan to produce those reels in court before the jury. I think that the two witnesses have said these were photostats of the bonds they dealt with. That is enough for us to go ahead until the issue is presented further. So we will go ahead on that score.

I really think the better way to proceed, Mr. Hallinan, is for you this morning to call the jury's attention to the entries on the bonds while the witness is here on the stand, and if any question comes up as to what was on and what was not on, he is here to explain it; whereas if you wait until he gets off the stand and you have the tellers on, then we may be in a position where at some future time you are going to have to get into an argument as to what happened and what did not.

(118) You can call the tellers out of order if you want to, but I don't see that that is necessary.

We will go ahead. You take the bonds and explain to the jury each set of bonds and the entries on it, and I think you can tell them that as to any particular little notations on there other than the things which have already been testified to, at the

moment you are not commenting on them, they will be commented on as subsequent testimony develops to lay a basis for it.

Mr. Rosenblum: Do I understand that based on the record up to this moment, even in the light of what I brought to your Honor's attention, you are now ruling that these bonds are properly in evidence and accepted by your Honor to go into evidence on the record as now made?

The Court: Yes.

Mr. Rosenblum: I respectfully except.

The Court: In other words, you are now asking to have the bonds stricken from the evidence?

Mr. Rosenblum: It must follow, so I must ask that.

The Court: What is the basis for your motion?

Mr. Rosenblum: I don't think there is any proof (119) of the photostat being an accurate photostat of the original document other than what you have heard, and I don't think that is sufficient based upon the record as it stands at this moment.

As I pointed out before, it struck me that what the witness was testifying to is that he is identifying the document in the shape it is in now as being the document that he previously held in his hands or used.

The Court: Neither of them specified in the shape it is now. They both said these are photostatic copies of the bonds. I think we can develop what was included on it and what was not.

In view of the fact that they have already been received and already been before the jury, I won't strike them at this time.

Mr. Rosenblum: I respectfully except.

The Court: All right, bring the jury in.

(Jury in box.)

The Court: I guess we will go ahead now with the examination of the bonds.

Mr. Hallinan: Yes, sir.

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(120) IRVING MISHEL resumed.

Direct examination (continued) by Mr. Hallinan:

Q. Mr. Mishel, yesterday you testified that you gave Government's Exhibits 1 through 8 in evidence to Mr. Miller on December 29, 1949. Now, I ask you to look carefully at these bonds and tell the Court and jury what notations were on these bonds when you handed them to Mr. Miller (handing). That includes both the face and the back of the bonds. Do you understand the question? A. No, sir.

Q. I am simply ask you, apart from the printed matter on the bonds that the bond would come in, in its original form when purchased. Do you understand that? A. Yes.

Q. Apart from the printed matter on the bonds, what was noted or written on the bonds at the time you gave them to Mr. Miller? A. On December 28th?

Q. On December 29th. A. On each and every bond the name Nat Chernoff appeared, only Nat Chernoff, nothing else.

The Court: Mr. Hallinan's question is not just what was put on there in handwriting. Is that (121) what you are talking about?

The Witness: Yes.

The Court: No, Mr. Hallinan I think wants to know what blanks were filled in on the bonds, if you know.

Is that right?

*Irving Mishel—for Government—By the Court*

Mr. Hallinan: Yes, what blanks had been filled in——

The Court: Not only by you, but by anybody so far as you recall. In other words, was the name of the person to whom the bond had been issued typed in at that time?

The Witness: On the top, where it says here "David-Nat Chernoff," only the name Nat Chernoff appeared on each and every bond, just Nat Chernoff.

The Court: Let me have the exhibit.

(The documents were handed to the Court.)

By the Court:

Q. Will you look at the bond that is marked Government's Exhibit 1 (indicating). Now, you will see up here (indicating) the name Nat Chernoff typed in and an address, 440 Hinsdale Street, Brooklyn, New York, and down here (indicating) Mrs. Blanche Chernoff. Was that on there when you brought the bond? (122) A. Yes, the face of the bond was just the way it is here.

Q. Now, there are certain stamps that have been put on there. This one over here (indicating) looks like "Paid, Federal Reserve Bank of New York." Was that on there? A. No, sir.

Q. Here is another one that looks like a stamp that had been put on there, "Pennsylvania Exchange Bank, New York City," and it says, "Paid $840." Was that on there? A. No, sir.

Q. That was put on after you gave him the bond? A. That is right. All that was put on these bonds was the name Nat Chernoff.

Q. That is on the back? A. On the back.

Q. That is where it had been written in handwriting? A. Yes, it was written in handwriting.

*Irving Mishel—for Government—By the Court*

Q. And this notation, "O. K. 6/5/52", that wasn't there? A. Nothing there, and then it had to be rewritten here (indicating) because it was the wrong line, and the (123) right name had to be put on it.

Q. This typing up here (indicating), which says "Issued September, 1942," that was on there? A. That was on there. I think if you take another one, it will be easier to read.

Q. Was that substantially true of all the bonds? In other words, the person in whose name the bonds were issued had been filled out and the date of issue had been filled out in typing? A. Yes, sir.

Q. And the name Nat Chernoff had been put on the back in handwriting? A. On the top line where it said "Print," Nat Chernoff, and then it had to be rewritten Nat Chernoff or Blanche Chernoff or David Chernoff, or what the proper name on the front was. That was done afterwards.

Q. And the stamps here relating to payment by the Federal Reserve Bank or by the Pennsylvania Exchange Bank (indicating) were not on it? A. That is right.

The Court: Now, all right, will you show the jury the bonds and call their attention to the appropriate notations?

Mr. Hallinan: May I suspend that, your Honor, (124) until I have the tellers identify them? I think it would be better to do it that way. Then I can point out everything on the bonds.

The Court: All right. You have all seen them in a general way, and when we have all the notations explained, we will go ahead then with the bonds further.

By Mr. Hallinan:

Q. I show you Government's Exhibit 1a in evidence, Mr. Mishel, which is entitled Redemption Form, and I ask you what was on that Redemption Form when you gave it to Mr. Miller (handing). A. The signature Nat Chernoff was on it, nothing else.

Mr. Rosenblum: May we get the time fixed, your Honor, as to when?

Mr. Hallinan: Yes, that has been testified to. I don't wish to go over the whole matter again.

The Court: Go ahead.

Mr. Rosenblum: I don't think it was testified to as to each one, because he is not taking them——

The Court: He says he gave them to him, a group of them made out in blank, and that Mr. Miller used one each time he cashed a batch of bonds.

Let us go on.

(125) Q. I show you Government's Exhibit 2-A in evidence and ask you what was on that redemption form when you gave it to Mr. Miller? A. Just the signature Nat Chernoff, nothing else.

Q. And that is above the printed notation "Write signature"? A. Yes.

Q. And that is also true of Government's Exhibit 1-A, is it not? A. That is true.

Q. I show you 3-A and ask you what was on that when you handed it to Mr. Miller? A. This one was handed to Mr. Miller twice. Originally "Nat Chernoff" where it says "Print name" was written "Nat Chernoff." He told me, "You have to write out the name on the proper line."

So Mickey Rosenberg rewrote the name "Nat Chernoff" on the proper line.

Q. And what you are saying is the proper line is above what is on the redemption form? A. Where it says "Write signature."

Q. I show you Government's Exhibit 4-A in evidence and ask you the same question with respect (126) to that? A. That is exactly the same as the last one.

Q. As Government's Exhibit 3-A? A. Yes, sir.

Q. I show you 5-A and ask you what was on that when you handed it to Mr. Miller? A. When I handed this to Mr. Miller the name "Nat Chernoff" was on it and where it says "Identification" "Thomas Young."

Q. And the same question with respect to 6-A? A. When I handed this one to Mr. Miller the name "Nat Chernoff" was on the first line. It had to be rewritten on the second line and the name "Thomas Young" where it says "Identification."

Q. And Government's Exhibit 7-A in evidence? A. This one is in the name of "Blanche Chernoff." I gave it to Mr. Miller in the name of "Blanche Chernoff."

Q. And Government's Exhibit 8-A? A. This one is in the name of David Chernoff and it had on it "Thomas Young" when I gave it to Mr. Miller.

Q. Now I show you again Government's Exhibit 5-A in evidence, and I ask you, first of all, who wrote or who printed the name 'Thomas Young" on that (127) redemption form? A. Irving Mickey Rosenberg.

Q. Will you tell us if you can recall, to the best of your recollection, when Mickey Rosenberg wrote or printed "Thomas Young" on that redemption form? A. At the time I received a blank pair of these redemption forms Mickey wrote the name "Nat Chernoff" on about a half a dozen of them in the improper line. Then I had him sign some more on the proper line and some singly "Nat Chernoff" where it says "Write"—w-r-i-t-e—"signature" on this line.

At that time I was speaking with Mr. Miller, and he says, "You know, somebody will have to stand as identification."

I says, "Okay, who do you want?"

He says, "Use one of your stiff accounts."

I says, "Which one, Thomas Young, John Case, Sam Marco?"

He says, "Thomas Young will do."

So I told Mickey to print in the name "Thomas Young" and he did on I think three or four of them.

Q. I show you Government's Exhibit 6-A in (128) evidence and I ask you the same questions with respect to that with regard to Thomas Young. A. Mickey Rosenberg printed the name "Thomas Young."

Mr. Rosenblum: What exhibit number?

Mr. Hallinan: 6-A.

Q. To save time: Under the same circumstances as you just related? A. Exactly, that is right, sir.

Q. I show you Goverment's Exhibit 8-A in evidence and ask you who wrote the name David Chernoff on that? A. This looks like either my signature or Sam Siegel's signature, one of the boys that worked for me. I am not sure. It looks very much like my signature.

Q. Who printed the name Thomas Young on that redemption form? A. I believe I did, because this looks like my signature.

Q. Do you recall when that was done? A. This was done when the last bond, it was a single bond, was to be cashed. It was, I believe, a hundred-dollar bond. It was the last of the (129) series that Mr. Miller had had. And he had no redemption form. And I was sitting at his desk. So, I don't recall whether I signed it or Sam Siegel. I think I did, though. I can't be too sure. It does look like my signature.

The Court: Are you going to another subject, Mr. Hallinan?

Mr. Hallinan: Yes, I am.

The Court: I would like to be clear now: When these redemption forms were given to Mr. Miller—excuse me. These are not the forms I had in mind, so I will withdraw my partially stated question.

Mr. Rosenblum: May I see those a moment?

Mr. Hallinan: Yes (handing).

Mr. Rosenblum: All right, Mr. Hallinan.

Q. Now Mr. Mishel——

Mr. Rosenblum: May I have the bonds meanwhile, if you are not going to use them?

Mr. Hallinan: I am going to use them.

Mr. Rosenblum: All right.

Q. I show you Government's Exhibit 1, which is a bond cashed at the bank on December 29. Now yesterday you testified that you received some money (130) from Mr. Miller, the proceeds from the cashing of that bond, and that you gave Mr. Miller so much money. How much money did you give him on that date for that particular bond? A. $100.

Q. Now, yesterday when I asked you for a list that you could recall of the various stiff accounts that you had at the Pennsylvania Exchange Bank, you gave me some names and said that was all you can remember. I ask you if Frank Williams was the name of a stiff account that you had at the Pennsylvania Exchange Bank? A. Yes, sir.

Q. I show you Government's Exhibits 10 and 11 in evidence, the Thomas Young and John Case signature cards. Yesterday you testified that you gave these to

Mr. Miller. I ask you with respect to 10, first, the Thomas Young signature card, exactly what was on that, outside of the printed matter on the basic form itself when you handed it to Mr. Miller? A. The name Thomas Young which was written in by Sidney Hack was on it, nothing else.

Q. I show you Government's Exhibit 11 in evidence, the John Case signature card, and I ask you once again, (131) outside of the printed matter on the basic form itself, what was on that card when you handed it to Mr. Miller? A. The name John Case, which was signed by Sidney Hack, and nothing else.

Q. Now, Mr. Mishel, do you recall sometime in October of 1950 being arrested by Secret Service agents for the fraudulently uttering of the Chernoff bonds? A. I was.

Q. Do you recall when that was? A. I believe it was October 6, 1950.

Q. Now did they arrest you on that particular day? A. I was arrested by the Secret Service and the police——

Q. I am just talking about the Secret Service that particular day. Did they arrest you? A. They did.

Q. Did they take you before the United States Commissioner? A. I believe that afternoon I was taken before a Commissioner.

Q. And was bail set? (132) A. Bail was set.

Q. And did you raise the bail that day? A. Yes, bail was furnished.

Q. And did you go free on bail? A. I did.

Q. Some time thereafter did you contact Mr. Miller? A. I did.

Q. Can you tell us when you contacted Mr. Miller, to the best of your recollection? A. Some time thereafter.

Q. Well, can you fix it? Was it a year, six months or—

Mr. Rosenblum: May the witness be permitted first? I think this is leading, your Honor.

Mr. Hallinan: Yes, it is, but——

Mr. Rosenblum: Well, may we ask the witness's recollection before we give him any suggestions?

The Court: All right.

Q. Can you recall, Mr. Mishel, when it was? A. Shortly thereafter.

Q. By shortly, what do you mean? A. Maybe a week, maybe a day, maybe a month. It is six years ago these things happened; they are (133) hard to remember.

Q. Just give me the best recollection that you have now. A. I think it was very shortly, maybe a week, maybe less, that I got in touch with him.

Q. Did you have a conversation with him at that time? A. I did.

Q. Where? A. I think I met him across the street from the bank, in the Holland house.

Q. What was that conversation? A. I said, "Hey, Jim, I got locked up for those Chernoff bonds."

And Mr. Miller said, "Well, don't worry about them."

I said, "What do you mean, don't worry?" I said, "I got locked up. Those tellers there said I cashed them there."

He said, "Don't worry, they won't have nothing to say about you. You just take of your end and keep your mouth shut. I will take care of my end."

Mr. Hallinan: I think I am through, but may (134) I have just a moment, your Honor?

You may inquire.

Cross examination by Mr. Rosenblum:

Q. Mr. Mishel, what is your deal for testifying? A. No deal at all.

Q. You have no deal at all? A. None whatsoever.

Q. Never made a deal with any authority? A. No, sir.

Q. The State nor Federal? A. No, sir.

Q. Never had a deal of any kind? A. No, sir.

Q. You are positive of that? A. Positive, as positive as I am sitting here.

Q. And that is as true as anything else you have testified to, isn't it? A. That is the truth. I hope to get some consideration, but no deals were made. In fact, I was screaming and hollering, "I don't want to testify, I don't want to." And I spoke it over with my attorney, and he said, "You might as well clean the slate, and if and when you get back to your family you will get back at least with a clean mind, clear head, no things (135) hanging over your head."

I asked Mr. Malenky of the FBI if he could do something for me. He says, "We are bound by law not to do anything."

I asked Mr. Hallinan, the first time I saw him, "Are you going to do something for me?"

He says, "If you want to testify, you testify. If you don't want to testify, don't." He says, "But I make you no promises of any sort in any manner or form."

I got balky.

He said, "You do what you want." I wanted a promise, but nobody made me any promise of any sort.

Q. That applies to any authority, whether it be City, State, Federal; is that right?

Mr. Hallinan: I am going to—I don't know what relevancy any——

The Court: I will overrule the objection. Go ahead.

Q. That is true, as to there being no deal with any City authority, State authority or Federal authorities? A. I just got finished repeating that.

Q. All right, you say that is so. Didn't you (136) tell Judge Joseph that you had a deal? Is that right? A. No, sir, no, sir.

Q. Do you know who Judge Joseph is? A. Sure I know who Judge Joseph is. The man sentenced me.

Q. Do you remember appearing before him? A. The man sentenced me. The man sentenced me.

Q. Do you stand on your statement that you never said to Judge Joseph that you had a deal and it was in writing? A. I never remember saying any kind of thing like that.

Q. Do you recall, Mr. Mishel, whether or not you appeared before Judge Joseph on February 20, 1953? A. I don't recall when I appeared before me.

Q. Do you remember there was an occasion when you were represented by an attorney by the name of Samuel Bierman? A. I know Samuel Bierman.

Q. Did he represent you? A. At one time he did.

Q. Do you recall a time came when you were asked or he asked, rather, Mr. Bierman, to be relieved of (137) representing you? Do you recall that?

Mr. Hallinan: I will object to this. I don't know what relevancy it has.

Mr. Rosenblum: It is leading up to the particular thing.

The Court: I think you can lead up to it in some other way. I sustain the objection.

Mr. Rosenblum: Exception.

Q. Tell us whether or not you made this statement to Judge Joseph on the date I have indicated at the time when Mr. Bierman was in court with you: "The defendant," meaning you, "Your Honor, may I say something? I have a copy of the agreement with the New York County Office that he said they would see that one sentence was meted out to me for everything."

Did you make that statement? A. I can't answer that yes or no. But I would like to explain it, your Honor.

The Court: Go ahead, explain it.

A. May I explain that?

Q. Go ahead. A. I did make that statement. But that was in 1953, when I pleaded guilty in General Sessions Court, in New York County; the Assistant District Attorney (138) on that case said to me, "Plead guilty to the charge and we will see that one sentence is meted out to cover all the sentences." And that is part of the court record of the General Sessions Court when I was sentenced I think January 1953. If that is what you are referring to, I did say that. But that has nothing to do with this case one way or the other.

Q. Mr. Mishel, the matter that you were on before Judge Joseph concerned itself with forged instruments, did it not?

Mr. Hallinan: Your Honor, I am going to object to this. I imagine he is going to pursue the same line of interrogation, on the theory that what he has there is inconsistent with the denial of the witness that he has a deal. And I don't think it is. I think that one sentence to cover several offenses is not a deal with the implication that Mr. Rosenblum has in mind.

The Court: I will let him go ahead and pursue it as he sees fit. Go ahead.

Q. Can you tell us what the subject matter of the indictment, of the two indictments, against you (139) was at the time you appeared before Judge Joseph? A. Grand larceny in the first degree.

Q. Did it concern itself with stolen securities or bonds? A. It did.

Q. Did your statement containing your having an agreement in writing take into account what was pending down in the County of New York? A. What date was that, sir?

Q. What is your recollection? A. I don't know. I am asking you.

Q. Well, do you remember the date, I think you said before you remembered the exact date when you were arrested in this court? A. Yes, I recall that.

Mr. Hallinan: We are getting argumentative, your Honor.

The Court: I will allow him to go ahead.

(140) Q. Do you recall a moment ago I gave you the date of February 20, 1953? A. At that time I had already been sentenced in the State Court and in the Federal Court.

Q. And wasn't that the occasion when you were saying to Judge Joseph that in connection with any sentence he was to impose upon you in the Bronx Court, you had a deal in writing whereby it was agreed that you would have one sentence to cover all?

Mr. Hallinan: I don't want to interrupt, but to cover all of what? The State Courts have no authority to bind the Federal Courts.

Mr. Rosenblum: To cover all the State Court matters.

Mr. Hallinan: All right.

A. I did say that, but there is an explanation, as I just explained to you, that——

Q. Did you have a deal or didn't you?

The Court: Wait a minute.

A. No, I didn't.

The Court: You step back by the desk there. Now, you go ahead and explain it.

The Witness: I explained it. I was sentenced on the 16th day of January in this court.

(141) The Court: Which court?

The Witness: The Federal District Court here, and I was told at that time that if I go over to the Federal Court and get sentenced, that the State would run a concurrent sentence to that. That was the whole reason that I pleaded guilty to all crimes and I cleansed my soul. I spoke it over with my lawyer. He says, "You go over the Federal Court, plead guilty; you go over the State Court, plead guilty; you go up the Bronx and plead guilty," and I did just what he said, and he says, "I have made arrangements that one sentence will be meted out to you to cover these crimes." I was sentenced to five years in the Federal Court on a Monday of that week and on Friday I received a further sentence in New York County Court. The next morning I was in Sing Sing. A month later, the Bronx County brought me back and they said, "Well, we would like to know exactly what took place here." So I told them who did the signing on each and every set of bonds, and they said that they will do something for me, which I explained to Judge Joseph at the bench that day, but no deals of any matter have been made for me. As much as I would like it and hope consideration, nothing at all was promised me, and that is all I have to say. (142)I tried. I admit I tried, tried my darndest. I said to him, "I would like to find out what's what." He says, "I am sorry; if you

want to tell us your testimony, tell it to us. If you don't want to, just get up on the stand and refuse."

I talked it over with my attorney, Mr. Leo Cutler, and he said, "I think the best thing for you to do for your own sake and for the sake of your wife and child is tell the truth." So I am telling the truth.

Q. Mr. Mishel, in this last answer at one point you said that in your talking with the people in the Bronx, they promised you. What was it they promised you? A. They said to me that they will give me some consideration if I tell them who signed the bonds in the Bronx. There was two signatures of fictitious people.

Q. Which ones were they? A. The names of those bonds?

Mr. Hallinan: I will——

The Court: Just a minute.

The Witness: If I can see my statement, I could tell you the name of those bonds.

The Court: Mr. Hallinan, did you want to say (143) something?

Mr. Hallinan: It has been answered. When we get off into that area, I might as well state it for the record now that I am going to voice my objection that I voiced in my memorandum to you, which I served upon Mr. Rosenblum, upon the grounds laid down in the Provoo case, which I would like to get in the record.

The Court: I am familiar with it and let us not take the time now. You can file a memorandum if you want to as part of this record. I am familiar with it.

Mr. Rosenblum: We have a brief in draft form that we would like to file on that.

The Court: I will take it in any form as long as I can read it.

Q. What statement were you referring to—you mean the statement I had? A. No. When I made a confession to Mr. Milenky I told him everything that I did in detail.

Q. When? A. About three years ago, I would say.

Q. In point of time, as to the Chernoff transaction, you have testified about, can you tell us how long after, let us say that date—either December 29, 1949 or the date up to the middle of February, 1950—how long after (144) that did you make that complete confession to Mr. Milenky.

Mr. Hallinan: I will object to this on the grounds it is irrelevant and it is argumentative. He has the witness' answer as to the time the statement was given. The purpose of this question is quite obvious, your Honor.

Mr. Rosenblum: It is cross-examination.

The Court: You say he has the date?

Mr. Hallinan: The witness just said he gave the statement about three years ago. Now, he is going back. It is argumentative.

The Court: I will sustain your objection on that basis.

Mr. Rosenblum: I except.

Q. When you say three years ago, you want us to understand that the first time you made a statement was sometime in the month of October, 1953?

Mr. Hallinan: I hate to do this, but I am going to object. He can put direct questions to the witness if he so wishes. I don't think he has to do it in this manner—do you wish us to understand. He

can ask, "Did you make another statement?"

The Court: The objection is overruled. Go ahead.

(145) Read the question.

(Question read.)

A. That is another question I can't answer yes or no.

The Court: You don't have to answer yes or no. If you can't answer yes or no, just say so.

The Witness: I made many statements. I made statements from time to time as they discovered different bonds that were cashed. I don't remember in days.

Q. I am asking you— A. But you are saying yes or no, and I can't answer yes or no.

Q. When you can't answer, please say that you can't answer. A. I want to explain myself.

Q. You said that you made a complete confession to Mr. Milenky about three years ago. I followed that by saying: Do you mean by that three years from now, which would bring us into October, 1953, or approximately that date? A. It may have been two years ago that this confession was made.

Q. It might be two years ago? A. It may have been three. I don't know for sure. (146) I have to see my statements.

Q. Let me ask you this. When for the first time did you make any confessior? A. To whom?

Q. To any authority, be it State or Federal.

Mr. Hallinan: About what?

Mr. Rosenblum: I think the witness knows what we are referring to.

The Court: Was that you who said that, Mr. Hallinan?

Mr. Hallinan: Yes, sir.

The Court: I am going to ask you to stand up and make any objection you have to me, but please don't put things in the middle of Mr. Rosenblum's question.

Mr. Hallinan: All right.

Q. When, for the first time, Mr. Mishel, did you make the first statement to any County, State or Federal authority with reference to a confession as to any part you played in connection with forged or stolen securities or bonds?

Mr. Hallinan: I will object to this on the grounds I tried to indicate to your Honor before, that this also includes the area that I am objecting to because I don't think under the rule of this Circuit, (147) the majority rule, it is the proper subject matter of cross-examination for impeachment purposes as outlined in the Provoo case. If the question is made more specific, I might not have an objection.

The Court: I will let him answer.

A. What is the question?

(Question read.)

The Witness: I don't recall the date, but the first confession that I made was to an Assistant District Attorney in New York County, John McAvinue.

Q. Can you tell us in point of time when that was? A. That was at the time that I was told that one sentence

would be meted to cover all these crimes that were committed.

Q. In everything, Federal and State? A. That was what was promised.

Q. You did have that promise? A. I just got through explaining to you, Mr. Rosenblum.

Q. I understand. Fix that date, if you can, when you made your first statement to McAvinue.

The Court: I will strike out Mr. Rosenblum's comment regarding the promise. I think that was entirely improper and I will tell the jury to disregard it.

(148) Mr. Rosenblum: I think the witness used the word "promise."

The Court: You are using it in two senses. You say he had no promise with respect to his testimony in this case. He did have a promise when he pleaded guilty in 1953 to cover three cases with one plea. Don't suggest that when he says he had a promise with respect to that plea, that is inconsistent with his statement that he has no promise here.

Mr. Rosenblum: I will stand on the record. I think the record shows what he said.

The Court: Read the pending question.

(Question read.)

A. I believe it was the early part of 1951, sometime in 1951. I was out on bail for the Chernoff bonds at the time. Mr. McAvinue told me he would see that bail was reasonable in the Bronx case. My lawyer at the time, Sam Bierman, had several conferences with Mr. McAvinue. He called in my wife, and they told me the best thing to do was confess all these sins and make a clean breast of it, you get one sentence, you do your time, and you come

back and hope to be a better man. So I gave him a confession. Part of that confession he turned over to the Bronx, who put a warrant against me. (149) I made bail in the Tombs. I was taken to Bronx County Court. I made bail in the Bronx County Court. I was out on bail. I was arrested for the Roanoke, Virginia matter. I don't recall whether it was before or after. All I know is I was arrested, and I got sentenced for that. Time went on. All the signers of the bonds Mr. McAvinue apprehended, and each and every one of them pleaded guilty to the charge. There were no trials of any sort. In fact, Mickey Rosenberg pleaded guilty to the Nat' Chernoff bonds, and there was about eight or nine other people who had signed bonds. They all pleaded guilty to them, and when it came time for sentencing, Mr. McAvinue advised Judge Mullen of what took place. Judge Mullen adjourned sentencing to see the outcome of this Federal case that I had. The Federal case, Mr. Bierman said, looked like I was going to get three years, so he went back and spoke to Mr. McAvinue and Mr. McAvinue says, "I can't get the Judge to go along with that." So back he went and he says, "If he gets five years, I will see that the State Courts run their sentence concurrent, that he does one time for the crimes and gets out." After all, I was a first offender. I had no previous arrest except this assault thing, which was actually not my fault. I came (150) to somebody's aid. I had a liquor license in my name, and that was the reason for that what you call promise or complaining to Judge Joseph, because I know that Judge Joseph is a strict man but he is an understanding man. That is my answer to that.

Q. Do you have anything else you want to add? A. No, sir.

Q. I read to you before, and you agreed that it was the fact, that you said to Judge Joseph, "I have a copy of the

agreement with the New York County office." May we have that copy, please? A Mr. Rosenblum, that is another yes or no question. I don't have it. I says that my lawyer has a copy of what he said and Mr. McAvinue at sentencing advised the Judge of the same thing.

Q. What lawyer has a copy of that agreement? A. I don't know, but Mr. Bierman, Samuel Bierman, was the one that was negotiating, him and a Mr. Irving Spieler. They advised me, and I took their advice, and that is what I was complaining to the Judge about.

Q. Can you tell us whether you ever saw that copy of the agreement with the New York County office that you said would see to it that one sentence was meted out to you for everything? (151) A. I know when I made my statement to them, they incorporated it in the statement. They asked me what kind of sentence would I hope for. I said I would hope for probation or suspended sentence since I was never arrested, and he says, "Well, two and a half to five, I think we could work out."

Q. Who said that, please? A. Mr. McAvinue.

Q. Mr. McAvinue said, "Two and a half to five we think we can work out." Who is "we" and whom did it refer to? A. That is New York County. He said that is what he thought I would get.

Q. In New York County? A. That is right. Then when the time came to get it, instead of getting that, I got a different sentence.

Q. You mean the Judge was then against you? A. Well, the Judge——

Mr. Hallinan: I object to the question.
The Court: Objection sustained.

Q. Did you tell Judge Joseph that the Judge who sentenced you in New York County was a member of the Board of the Pennsylvania Exchange Bank, a director?

Mr. Hallinan: I will object to that on the (152) grounds of relevancy.

The Court: I will sustain the objection.

Mr. Rosenblum: I think interest is a very important factor in this case.

The Court: The interest of the judge?

Mr. Rosenblum: No, the interest of the defendant.

The Court: How can a board membership of a judge who sentenced him have anything to do with the interest of the defendant?

Mr. Rosenblum: We are not saying it is true. I want to ask him that and develop whether it is true.

The Court: I sustain the objection. Go ahead.

Mr. Rosenblum: I except.

The Court: While Mr. Rosenblum is looking at his notes, you mentioned a Federal case.

The Witness: Yes.

The Court: That was in the Western District of Virginia?

The Witness: Yes, Roanoke, Virginia, Western District of Virginia, Rocky Mountain.

The Court: That has nothing to do with this case here.

The Witness: No, sir.

Q. You were sentenced in this court here, weren't (153) you? A. They had some kind of——

—Q. By arrangement, they sent the matter up here? A. I know I was sentenced in this court for something I did here.

Mr. Hallinan: I don't want to be over critical, but we have been talking about promises and arrangements, and I just want to say that it was under Rule 20, where if he is apprehended in this district,

the whole matter is removed under Rule 20 and disposed of here if the defendant wishes to plead guilty and consents to it.

The Court: But that was disposed of in 1953. Is that correct?

The Witness: Yes, I think January 16th, Judge Goddard.

The Court: All right.

Q. Did that matter have to do with the transporting of stolen securities or bonds in Interstate Commerce?

Mr. Hallinan: I object to this. The conviction is relevant. If he justs wants to mention that, that is relevant, but not an exhaustive inquiry into the subject matter.

The Court: I will overrule the objection.

A. It did.

(154) Q. Was that the matter in which you said that Judge Caffey's nephew was involved with you?

Mr. Hallinan: I object to this, your Honor, on relevancy.

Mr. Rosenblum: I don't want to make statements in front of the jury.

Mr. Hallinan: Let us go to the bench.

Mr. Rosenblum: Maybe we should go into chambers.

The Court: All right, we will take a ten-minute recess. It is the middle of the morning.

(Jury excused.)

(Witness excused.)

(In absence of jury.)

The Court: Now, what is the problem?

Mr. Hallinan: I objected to this question on the grounds of relevancy.

Mr. Perry: Your Honor, I don't think the Provoo case stands for ——

The Court: I intend to go along with you on the Provoo case at the moment, anyhow.

Mr. Perry: Here is what we expect to show, Judge. There are probably four or five crimes for which Mishel has actually pleaded guilty. There are a number of others, three or four or five—I don't recall at the (155) moment, your Honor—which were included in his plea of guilty. In other words, the whole thing washed out at one time. We will show by exploring the facts of these crimes how this man Mishel operated, and his operations have a remarkable consistency about them in all of these cases, and he operates in two ways.

He operates, first of all, invariably and, as a matter of fact, in every instance that we know of, by duping a bank official; and then, secondly, he operates by duping people, even people who know that a crime is being committed, in other ways in connection with not telling them exactly what they are doing, or he actually will dupe innocent people.

In this Roanoke matter, we are prepared to show, your Honor—I don't know how much I should go into the facts—that one of the dupes of this man Mishel was a Federal agent; that this agent was introduced to Mishel by an attorney; that Mishel gave him a cock and bull story very fast one day in Virginia and the agent introduced him to bank officials, and as the result of that, Mishel passed certain bonds in a transaction somewhat similar to this Chernoff matter to a bank in Virginia.

That agent was exonerated, even though Mishel did (156) try to put him into the picture. We will

show, your Honor, in other instances here in the Bronx County, for example, a woman was indicted and later exonerated because she was found to be a dupe of Mishel.

The method of proceeding is so important in this case because it is the defendant's contention that Miller here was a dupe of this man Mishel, and I think we can show to your satisfaction, perhaps to the jury's satisfaction, that the way he approached this thing in the Chernoff matter was the same as his course of action.

The Court: Inasmuch as we have started on this, I imagine Mr. Hallinan is as familar with these various situations as you. There are two now.

Can I get an overall picture now of what other items you want to go into without prejudicing your case in any way?

Mr. Perry: Yes. Will you excuse me a minute, Judge?

(157) The Court: I just mean of this nature. I would like to get all these other unlawful acts.

Mr. Perry: Facts, your Honor.

The Court: Yes. I think my own interpretation of the Provoo case is that I have to decide each situation pretty much on the facts of that situation; that there just isn't any blanket rule that we won't go into prior vicious or immoral acts here as well. It will depend on the bounds of relevancy and credibility against the unfairness of possible prejudice. And that would work as to both defense and prosecution witnesses. Now, I have these two in mind and I would like to know if there are any others so that I can try to, I think I have to sift them, factual situation by factual situation.

Mr. Perry: The one group you can consider,

bank transactions. We will probably show six or seven. We are in the position to show six or seven that we know of, where the modus operandi is the same.

The Court: That is the situation where he makes a dupe of the bank officer.

Mr. Perry: Yes. And we can show in probably about six situations in which, perhaps two (158) in the Bronx and three or four of them, to which he pleaded guilty to, three or four of them. Another situation which would show a relevance to the issue I think is his duping of the Pennsylvania in another situation, and that was the first indictment returned against Mishel, and that is where he obtained the loan from the bank by false pretenses. And then he pledged with the bank these Altrin securities which also resulted in an indictment. We would show in that situation also he duped somebody into signing these bonds, somebody who didn't know that he was doing anything illegal.

The Court: Well, I will tell you how I approach this and I will give you time to do more extensive research on it if you see fit. My own feeling is that those transactions are not a proper basis for for cross-examination. The very parallel to this case is the very item, the very element that makes it improper cross-examination. I mean, as far as going to the general credibility of this witness, they are cumulative to the crime for which he has already been convicted. Therefore, their value, their materiality in the case in a legitimate fashion is small. (159) The danger to the case is that each one of those situations you produce would produce a separate trial. In other words, you say he duped a bank officer. Mr. Hallinan has to go out and prove that the bank officer was a party to it, that he

was not a dupe, or that he was a happy colleague. And we get into this problem of trying six or seven cases in one.

So I think that on the present state of my learning in the field and the present state of the record I will sustain the objection to that. Now I don't do it on any broad scale approach from the Provoo case. I think the same situation came up in the Provoo case, and what the Circuit Court of Appeals said was that proof of homesexuality has little bearing if any on the question of credibility and has terrific weight from the point of view of prejudice and it shouldn't have been gone into. They did refer to a line of cases which seem to say in general fashion that the Federal rule was that you can't go into prior vicious and immoral acts where there is no conviction. I don't think the rule, at least my present thinking, and I am not ready to say (160) that rule is any solid inflexible barrier, that if the prior vicious immoral acts would have an appropriate weight on the question of general credibility and will not confuse the main issue of the case and will not get us off into the trial of a whole series of similar or allegedly similar transactions, that they could be gone into on cross. I think you have to look at each situation in the light of the particular case you are trying and the particular transaction which you want to cross-examine on. And from what you have told me I don't think we ought to go into those.

If you can get some cases I will be glad to look at them. But that would be my tentative ruling now.

Mr. Perry: Your Honor is familiar with the Ross case in this Circuit?

The Court: I am not sure that I am.

Mr. Perry: Your Honor, in that decision——

The Court: I don't like to delay it. What I would appreciate is this. This witness is not going anywhere; he is in custody. I would rather go ahead now. I don't like to hold the jury here. (161) But what I would appreciate is a memorandum from you, and I don't care how rough the form is, get the cases together that you want me to look at and I will look at it, and we can come back to this further if you want to. But at least you have in mind at the present time my present disposition of the matter.

Mr. Rosenblum: I have another matter which I would like to bring to your Honor's attention. Some of these things I am going into are for the purpose of showing the interest of the witness.

The Court: A perfectly valid reason for going into it, but I just want to be sure that we don't confuse interest that he may have had in the past, which has now expired, with the interest that he has now in this particular situation. That is why I interrupted as I did with respect to the comment which I thought you made. But we'll get along.

Mr. Rosenblum: I tried to point out, when the man testified that he has no agreement of any kind, only by my developing it as I have been going into these things, when he said he never had an agreement the jury can then consider all his testimony to see whether or not they should give the weight to his (162) testimony that it ought to have. I am not impeaching him. It is a question of trying to show those facts that the jury should consider. In other words, with that in this case, I think I could put into the record and the proof would show that he has consistently followed a pattern of doing a number of things for the purpose of getting benefit

for himself and that he now similarly has that interest in what he is doing now.

The Court: That is the sort of thing that the courts have shied away from. I mean, what they have always tried to do is avoid trying 99 other other cases along with the one they are trying at that present time. There are one or two situations, which I know you know very well better than I, but I don't think this is one of them. And I have let you develop what you might call this little cluster of 1953 cases. But, frankly, from the distance that you have gone I gather that whatever arrangement he had in connection with them are completely unrelated to his testimony here. Therefore I am not disposed to go much further on that subject. And as for going off into a discussion of his general ability to dupe bank officers or anybody else——

(163) Mr. Perry: Or banks.

The Court: —banks, bank officers, FBI agents, anybody else, or even courts, I have not disposed to do that by proof of particular transactions. It just would encumber this case with the trial of too many extraneous issues, because I just can't go into that, without having Mr. Hallinan get back into it, and I don't think that the productivity of cross-examination would justify our going into it.

Mr. Perry, have you got something further?

Mr. Perry: Yes, Judge. Two things. First of all——

Mr. Rosenblum: This is out of the presence of the jury so we can say it to you.

Mr. Perry: We have evidence, we have been informed, that there is a deal with the Government or the agent in this case.

The Court: Just a minute. You are at perfect liberty, as long as you are informed or that you

suspect that such a deal could have been made, to cross-examine about it. I am just talking about the manner, the approach to it, by going through a series of completely independent deals that he may (164) or may not have made in the past. There is a limit as to how far we can encumber this case with proof with respect to them, because if you go into it on cross I have to let Mr. Hallinan go into it on redirect, and then you come back on recross, and we will spend a week getting down all of the new answers of his on what seem to me a completely unrelated transaction with Bronx County and New York County, now, if we are going down to the Western District of Virginia, and I just don't think that it is—I have to keep in mind at all times whether to help you get a few more straws to build up and accumulate in your cross-examination, I don't think I am justified in exposing the jury to that kind of confusion and distraction from the issues of the principal case.

Mr. Rosenblum: Don't you think, in the light of the fact that the witness has said he doesn't have any agreement now and he never had any agreement, that——

The Court: He never had any agreement with respect to his testimony in this case. He has never said that he never had any agreement with respect to his testimony in any case, as far as I (165) recall. That was really the sense of his testimony as I got it. And that is what I very much want to avoid any confusion on. I don't see how anyone could listen to his testimony this morning and not come away with the impression that when he pleaded guilty in New York he went over the thing prettty carefully, he canvassed it, he wanted to know whether he was getting a consecutive sentence or a concurrent sen-

tence. He didn't have a binding deal but he did his best to get one and he at least had what he thought, accurately or otherwise, he at least thought he understood the statement of the prosecutor, at least he thought the prosecutor had made some predictions to him as to what he thought he could get. So in that sense he had a quote deal close quote. But that was, as I see it, entirely unrelated. I don't see how that deal with the prosecutor could affect his testimony here from the point of view of interest. It might have some passing effect, that he got into a mess, and again it shows how when he is in messes——

Mr. Rosenblum: If you remember the testimony it really amounts to this: He says, "I never wanted to give anybody up." He said, "I never wanted to (166) talk, I never wanted to cooperate. My lawyer and my friends and others told me to cleanse my soul." So he ties it in with the statement that he—he says he never had a deal in connection with any sentence that was to be imposed upon him in the County or in the State, and I broaden it to the State, or Federal, I having in mind that he had pleaded guilty in two counties, and also in the Federal. And he made that flat statement.

It isn't a question of whether he got what he thought he ought to get or what he said they promised him.

But I think if I can show that at that time when he took the position "I have a deal" in connection with the sentence, and it also tied into the Federal, if I can develop those circumstances, that that ought to be considered in connection with my question as to whether or not he has any deal in this case.

The Court: You say if it is tied into the Federal. I assume you mean this particular case.

Mr. Rosenblum: Yes.

The Court: Not with some dead Federal case?

Mr. Rosenblum: No.

(167) Mr. Perry: If the sequence can be developed a little I think you will see—we have no personal knowledge whether there is a deal or not; there is information we have received that there is a deal. We could tell you if you wanted to know.

The Court: No. I rely on both of you as responsible people not to go into something if you didn't think there was any basis. But, as we all know, our bases are frequently erroneous.

Mr. Perry: Oh yes. But dispassionately, leaving aside any question whether it is or is not, we think if we are able to develop by close analysis Mishel's disclosures and the dates of the disclosures we think we can, entirely apart from my information, leave an inference from which the jury might well draw—I will tell you frankly that the reason he has not been charged with any crime relative to the Chernoff matter, of which he could be charged with two or three, is because of an understanding that no charge was to result.

Mr. Hallinan: That what?

Mr. Perry: No charge was to result.

Mr. Hallinan: Oh, I will have the assistant who handled the case testify why that was done, your (168) Honor. He had received 10 to 20.

The Court: That was the thing that occurred to me.

Mr. Hallinan: I will have the assistant, if you like, tell——

The Court: He had a maximum that the State could hold him for—15 years? 20 or 30?

Mr. Hallinan: 20——

The Court: Was the 5 to 10 concurrent?

*Colloquy of Counsel*

Mr. Hallinan: No. On 10 to 20—five years.

The Court: So he had a maximum of 25 years.

Mr. Hallinan: Yes.

The Court: Mr. Rosenberg knows, from other days they don't usually continue prosecuting after that point.

Mr. Perry: I think there are two answers to that.

The Court: There are two ways to approach it. Either you work back and establish your links before you go into this other prejudicial evidence or you give me a written offer of proof which intertwines these things you want to develop and which you think will give you the basis for legitimate cross-examination.

(169) Mr. Perry: We have one practical problem. We have opinions of Mishel which may not be shared by Mr. Hallinan. But we would feel that any of these discussions if they were to filter back to Mishel, he would have suitable answers to most of the problems we might raise for him.

Mr. Hallinan: Your Honor——

The Court: I think they should not of course be discussed with him, and I don't think that there is any likelihood that they would. Of course you can cross-examine as to any conversations he has had with anybody and the dates of them and the times and the circumstances. As far as the prosecutor is concerned——

Mr. Hallinan: I am perfectly willing if they make the motion now to have your Honor instruct me not to discuss anything with Mishel until they finish their cross-examination.

The Court: I don't like to put people in strait-jackets, but I think we all know the sense of the thing. And, as a matter of fact, if you want to give

me your offer of proof, and if I think that there is anything to it that I need Mr. Hallinan's help on, then we will pass to the question of whether I discuss (170) it with him. But it is really a matter which advocacy is of a relatively limited help. I have to try to balance in my own mind the prejudicial aspects from the legitimate aspects of what you are trying to build up.

You get it together for me. We have the weekend coming up, and I will go over it when you give it to me. As I say, the witness is here. We can recall him if we need him.

I think that is about the best we can do. But my tentative ruling will be not to go into this question.

Mr. Rosenblum Your Honor is acquainted with the rule that even if a promise hadn't been made and if we can show that there is hope of reward——

The Court: He has stated that in his own words here. He says, "I hope, I hope hard."

Mr. Rosenblum: But if I could develop, I have a right to show that——

The Court: You have shown it, and I think very effectively. That is why I wonder about the cumulative effect of this. There isn't any doubt he hopes to get something. On the other hand, (171) he has not been promised anything, from what he said. If you want to go from there and cross-examine on that point, fine, but don't do it by showing promises in what seem to me to be unrelated cases at the moment.

Mr. Rosenblum: It is quite important. The jury will have to ultimately come to a determination as to whether or not they believe he is testifying because either he received a promise or the facts and circumstances are such that he hopes to receive a promise. I think that anything which is relevant

to that becomes admissible, even if it may mean working into some other cases. If we can establish from those other cases those facts which would help the jury to determine this very important and vital issue. For instance, I had hoped to ask him—we know that a man says, "I have done certain things"; we know what he has said he has done. That doesn't only go for the State. It goes for the authorities and for everyone who is in a position to be affected by it. And if we can bring to the attention of this jury that he at one time, I don't care, you don't want me to refer to name, time, place, or particular occasion, didn't make certain statements that he had (172) done certain things, hoping that that would be the basis for his reward, then I think it gives the jury that evidence which it might be able to use in evaluating the very important question as to whether he is testifying because of the interest he has in the outcome.

And we might as well recognize this. Your Honor said that I certainly do know from my past experience about lengths of sentences. You take in this case. If some step is taken to relieve this witness of the five years he has in this court, he is subject to parole in two-thirds of ten years. And that is the maximum that he would serve if they want to let him go, because of what he did. I say, and Mr. Hallinan may disagree with it if he thinks I am wrong, 10 to 20 he can be subject to parole in two-thirds of the time——

Mr. Perry In the normal situation, your Honor is certainly more familiar, at least as familiar, since we both worked in the same office, Judge——

The Court: We worked on the same problems at one time or another.

Mr. Perry: Your Honor knows that normally

(173) a parole board will not consider someone for parole at the expiration of the minimum sentence while there is outstanding another sentence to be served consecutively. In a situation like that, unless there is some equity at work, the parole board will cause an inmate to serve a very substantial part of the sentence he is now serving before paroling him, in which case he would then pick up service of the second sentence which overhangs.

The Court: My own experience, this is all speculative anyhow, but my own recollection is that very often they would parole on the first occasion if they thought there was another consecutive sentence. Whether the Federal aspects would make any difference to that I don't know. But if a man has two consecutive State sentences my recollection is that they will usually grant parole on the first or second opportunity the man had to get out, so that he could start serving his second sentence, particularly if it was a long one. I think that from what you and I know this may be both speculative and irrelevant.

Mr. Perry: I handled parole matters for a while over at the office.

(174) I would say this in any event, your Honor. The inducement that Mishel has, and whether it has been given to him by others or whether it emanates from himself, is to be released on parole at the shortest possible time in the State which on 10 to 20 would mean six and two-thirds years. In the Federal he has a five-year sentence but only one-third not to be served if the parole authorities take consideration of any special equity in his favor. So that actually riding on this case, whether express or implied or hope or not is about eight or nine years for this man.

The Court: That is what he may hope.

Mr. Perry: Maybe it is just a hope. We have information that it is more than a hope but he relied on this.

The Court: He hasn't refined his hopes but he certainly indicated he has hope. I think anything else much beyond that is going to be primarily cumulative.

But I have stated my position, and we are really going around in circles now. If you want to prepare a more direct statement of the intertwining effect you are trying to work out or you want to give (175) me further cases, I will be glad to look at them.

(The following proceedings took place in the presence of the jury.)

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IRVING MISHEL resumed.

The Court: All right, Mr. Rosenblum.

Cross examination continued by Mr. Rosenblum:

Q. Do you know a prisoner by the name of Jacob Wissenfeld? A. I do.

Q. Can you tell us at what jails you were with him, if you were? A. I was at Westchester County Jail with him.

Q. Were you also down here in the New York City Jail? A. In the Tombs? No.

Q. Any place outside, within the City of New York, outside of Westchester County? A. Yes. I was in the Federal Detention House for a few days with him.

Q. With Wissenfeld? A. That is right.

*Irving Mishel—for Government—Cross*

Q. Did you tell Wissenfeld that you had a deal for assistance from the authority, Federal, State authorities, if you testified against Miller? (176) A. That is one of those questions, your Honor, I can't answer yes or no either. I would like to explain it myself.

The Court: Go ahead.

Q. Can you answer that? A. I am not going to answer that.

The Court: He said he can't answer that yes or no. He would like to explain it himself.

Q. Go ahead.

Mr. Rosenblum: I didn't hear the first part that he said he couldn't answer it.

A. Well, Wissenfeld——

Q. A little louder, please. Keep your voice up, if I may suggest it. A. Wissenfeld and myself were in the Westchester County Jail for about five or six weeks at one time, maybe more, I don't know, for some quite a few weeks. And may I call him Jake, because that is what everybody calls him.

(177) Q. Jake? A. Yes, he is what they call the jail house lawyer. You know what that is, I presume. He was giving me tall stories what he could do and what would happen if I didn't testify, what he could get me, and this, that and the other thing.

Q. Will you tell us what "this, that and the other thing" is? A. Look, Mr. Rosenblum, do you want me to tell it or do you want to stop me?

Q. I won't stop you. I have another suggestion. Will you keep your voice up? I have difficulty in hearing. A. I happen to be under medication. Pardon me a minute. Let me take this. I want you to know this is a strain.

Q. What is this? A. A strain confessing things. You know, it is not easy to confess things that were done.

Q. You found it difficult in the past? A. I did. I still find it difficult.

Q. How many people did you testify against?

Mr. Hallinan: I object to this.

The Court: I will let him answer. This will probably mark the limit of the interrogation with that (178) question, but I will let this question be answered.

A. I don't want to answer it.

Q. How many people did you testify against or give information about? A. I am not going to answer it.

Q. You are not going to? A. That has got nothing to do with this case here.

The Court: Well, you think back now and just give us the number.

The Witness: I refuse to answer that question.

The Court: I am afraid I will have to direct you to answer it.

The Witness: I still refuse, your Honor.

Mr. Hallinan: Your Honor, may I talk with the witness?

The Court: No.

Mr. Hallinan: All right.

The Court: All right, we will note your refusal. Go ahead.

Q. Will you please tell us of your conversation or conversations with Wissenfeld with reference to the subject matter I just brought to your attention? A. I would like to tell it in my own words without being interrupted.

(179) Q. I stand admonished, but will you keep your voice up, please? A. I do keep it up.

The Court: You go ahead and answer the question.

The Witness: We were in the Westchester County Jail for quite some time, and as I started to explain, Jake is what they call a jail house lawyer, doing twenty years to life, and Jake is the type of fellow that would squeal on anybody to get anything, and Jake was in the need of money quite badly. So Jake came to me and said to me, "Listen, I can get in touch with Miller."

I said to him, "Go ahead, do what you want. I don't care what you do."

So he got, through some lawyer I believe by the name of Vukor, something like that, he got in touch with you, and you sent back a message that you would see him that evening or something.

I says, "Look, Jake, do what you want." We were just having idle gossip as far as that is concerned. All it was was idle conversation between one prisoner to another because Jake happens to know me about fifteen or twenty years, but I don't know him. The only place I knew him from was jail. He knew a lot of people I knew from the lower east side. So he (180) told me that you offered forty, twenty—let me phrase it properly. He says he could give me $20,000, $30,000, or $40,000 in cash if I would go light on my testimony against Miller, and I told him that if I wanted to go light, I don't need him to get in touch with Mr. Miller because I know very

well how to get in touch with him. So the conversations continued and we gave each other tall stories. I would tell him, "Yeah, they are going to do this, they are going to do that." I gave him a lot of, shall I say, fairy tales.

The weeks went on, and I understand he contacted you and he said made arrangements. I said, "O. K., you can do what you want."

In the interim, he took me down as a witness that his civil rights have been violated in the Westchester County Jail. So I said to him, "Look, Jake, what is the sense of bringing me here?" I says, "I am here. It is tough enough being locked up." He says, "Well, you got to help me out. The warden wants my fingerprints and I don't want to give them, and you know that they coerced me to do it." I says, "I don't want your ideas one way or the other." He says, "Don't worry, you will have to come."

The next thing I knows I was brought to the (181) Westchester County Court and subpoenaed as a witness. I never appeared because the judge up there ruled that whether he was forced to or not had nothing to do with his giving his fingerprints.

Jake is known as a fellow that would do anything to get some money, and I understand he got in touch with you to get some money so he can fight his case. Originally he had fifteen to twenty, as he is a thief. He has been a thief and in and out of jails all his life.

After that he come back on some kind of motion and they gave him twenty to life. Subsequently I seen him in the Federal House of Detention and the authorities there would not let me talk with him at all. They separated us and it is just as well that they did.

*Irving Mishel—for Government—Cross*

A couple of days after, back he went, but as far as my telling him things, I could have told him anything, but all it was is fairy tales, and I can't say exactly what I told him because I could have said about anything. I did say that Mr. Miller was guilty and I meant it and it is true, but the other parts were fairy tales. Quite a bit of it is a fairy tale.

If you ask me the questions, what I said to him, I will tell you what I said was true and what was (182) fairy tales. I will be glad to do that——

Q. Tell us— A. Let me finish. You ask me the questions; I will be glad to answer them. But I don't want to answer them yes or no where I can't. That is all I ask. I don't want to be rude or anything.

Q. Have you finished? A. Yes, sir.

Q. Did he tell you that he wrote a letter to my office, and that no one got in touch with me excepting himself? A. That I don't know, but I can tell you this. As long as we are talking, we might as well get it out without this cross-examination. I will tell it my way, whether it be right, wrong or what. Wissenfeld told me nothing about your part of the bargain. All Wissenfeld told me was that he could get in touch with Mr. Miller and that Mr. Miller had moved from one address to another address on Park Avenue. I believe it was 515 to 535. And if I wanted, he would see that Mr. Miller got me some money that I should go light on his testimony. And I told Jake as far as going light, I won't go light and I won't heavy. All I want to do is tell the truth and get finished with this mess.

(183) Q. Did he tell you that he wrote a letter to my office, to me, and had his sister get in touch with me? Did he ever tell you that? A. After——

Q. Did he or didn't he? A. I can't answer yes or no to that.

Q. You can't answer that yes or no? A. No, no.

Q. Go ahead. A. There was another prisoner there by the name of Macken. I don't know his full name, but they called him Red, and the day Wissenfeld left, Red grabbed me aside and said to me, "Listen, Wissenfeld is looking to set you up on this fairy tale that you told him," and that is when I found out exactly what took place. All I thought was that it was a fairy tale between us, you know, idle jail gossip. Wissenfeld was supposed to write some writs for me, and I, like a fool, listened to some of it, but actually telling him anything about this case other than Mr. Miller was guilty, I didn't say one word.

Q. Are you finished? A. Right.

Q. Did he tell you that Mr. Perry, who sits here (184) and is an associate in my office, was up to see him? A. I don't remember.

Q. Did he tell you that what you referred to as fairy tales, with reference to the deal if you testify in this case against Mr. Miller, that he told that to Mr. Perry? A. I don't recall him telling me anything about Mr. Perry.

Q. You have no recollection of that either way? A. No, one way or the other. All I recall is he says he could get me a chunk of money, and I says, if I want a chunk of money, I can get it without him, and I certainly don't need him to go to somebody who I used to sit at his desk day in and day out.

Q. Do you say now that his statement that you had a deal with Mr. Milenky, in particular, that you would get consideration in connection with the time that you were doing, was a fairy tale? A. That is one of those questions I can't answer yes or no. I just got through explaining to you what I told Jake and I told it to you just here the same thing. You are just trying to repeat me.

Q. Did you tell him that you had a deal? A. No, no,

no, no deal. In fact, I was screaming at (185) Jake. I told him I can't get nowheres with the U. S. Attorney's office. They don't want to promise me a thing. I used different language, but since we are in court I can't use it.

Q. Go ahead. A. Jake told me, "Why don't you write out some kind of a writ to get out of their custody, show cause why they don't try that case, get it disposed of, what and wherefor to it," and I said to Jake, "All right, write me one out," and he did. He wrote me a writ out, but I never used it because when I saw my lawyer, Mr. Cutler, who was my lawyer then, he says, "Why do you listen to jail house lawyers? You have got to do your time and forget about it. If you get any consideration, you will get it, but you know there is going to be no promises made." I see Mr. Milenky, and Mr. Milenky of the FBI said to me, "I can't promise you anything. I am prohibited by law." I saw Mr. Hallinan. I saw Mr. Brown. I saw Mr. Costiglio I asked them all the same thing and they all said, "We can't promise you nothing."

Mr. Hallinan: Would you mind my indicating for the record who Mr. Brown and Mr. Costiglio are?

Mr. Rosenblum: All right.

Mr. Hallinan: They are former U. S. Attorneys (186) in this district, who are no longer with the office.

The Witness: I saw Mr. Silverman also at one time, who is with this office, I think, an assistant, and he told me the same thing, "No promises could be made to you."

Q. Did you tell Mr. Wissenfeld and give him the details as to how you were coached in connection with your giving testimony in this case against Mr. Miller for which you were to get consideration? A. No, no. All I ever

told Wissenfeld would be maybe some of the facts and what Mr. Miller was guilty of. Other than that, everything else I told him was fairy tales.

Q. Give us what you refer to as fairy tales. A. I don't remember what I said. I could have said anything.

Q. You mean you could have said the things that I have just asked you about, but you don't remember them? A. No, if I said it, I would remember them, but I remember telling him fairy tales about a Mr. Horton, I believe is the name. I remember telling him fairy tales about that.

Q. You know about the practice of people in jail getting information from each other and then testifying against the other one? (187) A. He can do whatever he wanted with it.

Q. You know about the practice of getting information and then testifying against the person from whom you got the information? A. I don't know what he was going to do.

Q. I say, do you know about that? A. I don't know what he was going to do.

Q. Do you know that there is such a practice?

Mr. Hallinan: I object to this.

Mr. Rosenblum: I will change the form.

Q. Didn't you testify against someone in the Fox case in connection with what you claim somebody told you? A. I refuse to answer that question the same as the last one on the same grounds.

Q. That man was up for a life sentence or capital punishment, wasn't he, the case in which you testified against him as to what you claimed he told you in jail? A. I refuse to answer any of those questions.

Q. Isn't it a fact that when you testified in that case, you didn't even give the facts as to your conviction record?

*Irving Mishel—for Government—Cross*

Mr. Hallinan: I will object to this. We are getting into extraneous matter here. What he may (188) or may not have testified in a trial is entirely apart from this.

The Court: I will sustain the objection in so far only as it goes to the particulars of that case on trial. As to the truth or falsity, you go ahead.

Q. Did you, at the time when you appeared in that case, the one that is *United States* v. *Fox*, tell the jury and the Court the full facts of your conviction record?

Will you answer that question, please?

Mr. Hallinan: I will object to that question on the grounds the full facts of that would call for his going into the entire proceedings, what happened, the conviction itself or all of the facts on which the conviction was based.

The Court: Will you read the question?

(Question read.)

The Court: Do you want to reframe it?

Mr. Rosenblum: I will reframe it, yes.

Q. Do you remember the case of *United States* v. *Raymond Francis Fox*? Do you remember that case? Or can't you answer that yes or no? A. I told you three times I don't want to answer it.

(189) Mr. Rosenblum: I am going to ask your Honor to direct the witness in every instance, where he has previously during my examination refused to answer, to answer my questions.

The Court: Yes, I will so direct. He asked you whether you recall that name. You tell him whether you recall it or whether you don't.

The Witness: I told him I don't like to answer that.

The Court: It is not what you like. We are not here for a picnic. You answer the question.

The Witness: Yes, I recall it.

Mr. Rosenblum: As to two or three prior questions where he refused to answer the questions. I didn't ask your Honor——

The Court: I deliberately followed your lead. I have done exactly as you asked me. You tell me when you want me to direct him.

Mr. Rosenblum: Fine.

Q. Do you recall testifying in that case as a witness against Mr. Fox? A. I do.

Q. Was the charge kidnapping, without going into the details, so we will know what case we are talking about?

(190) Q. And can you tell us whether or not you testified, and I will give you the date and see if it is the approximate date, on February 10, 1954, before Federal Judge Clarence J. Galston? A. I think that was his name.

Q. In that trial, were you asked as to how many times you had been convicted? Do you recall that? A. No, I don't recall that at all.

Q. Can you tell us whether it wasn't the fact that by February 10, 1954, you had three convictions? A. I recall the trial, but I don't recall what I said as far as prior convictions now.

Q. That was not my question. My question was: Can you tell us whether it is not the fact that by that date, February 10, 1954, you at that time had already been convicted of three different felonies? A. No, I don't think I was convicted of three different felonies at that time.

Q. Three convictions, whether felonies or misdemeanors. A. I think that when I testified there, I stated the New York County conviction and the Federal conviction. Now, I was not convicted until after I am sentenced on the Bronx one, and I was sentenced in 1955.

(191) Q. Forgetting the Bronx one, hadn't you been convicted of three felonies by February 10, 1954? A. Three felonies?

Q. Yes. A. No. You will have to refresh my memory and show me where there was three felonies.

Q. Were you convicted of using a blackjack in felonious assault? A. That is no felony.

Q. 1897 is not a felony? A. The way I understand it, it was a misdemeanor, and I got a six months' suspended sentence. If that is what you are referring to, I may not have said anything about it because later on that thing was straightened out. I happened to hit somebody for a friend of mine, who owned that, and subsequently after that conviction I got a liquor license in the State of New York.

Q. You hit somebody with a blackjack. Isn't that so?

Mr. Hallinan: I will object to that. It is the conviction he is interested in. He doesn't have to go into the details of it.

The Court: I will let him go into the details.

Q. It was a conviction for a violation of 1897 (192) with a blackjack. Isn't that so?

The Court: I am not sure I understand your question now. Are you asking him what he was convicted of or what he did?

Mr. Rosenblum: I will withdraw it.

The Court: All right.

Q. Do you recall you were cross-examined by Mr. Petoni, the attorney for Mr. Fox? You may not know the name. If you do recall the name, tell us. If not, I will modify the question so that it will include: Do you recall that some lawyer who represented Mr. Fox cross-examined

you? A. I remember he cross-examined me for about three minutes.

Q. Can't you really answer that yes or no or do you want to give it your own way? A. About three minutes he cross-examined me, maybe a little more, a little less.

Q. The answer then is yes, right? A. Yes.

Q. Do you remember on your direct examination you testified to the fact that you had a conviction of ten to twenty years? A. I do.

(193) Q. Regardless of whether that first conviction of yours was a misdemeanor, or a felony, the fact is you were convicted, is it not? A. The fact was I forgot about it because I——

Q. You know now? A. Well, you are reminding me of it so I know about it now, but at the time I forgot about it. I don't know what that has to do with anything else.

Q. Do you now admit that when you testified at that time, you did not truthfully answer the question as to the number of convictions that you had? A. I admit that I said I had the conviction in New York County, and I admit that I had the conviction in the United States District Court of Virginia. The other one I don't remember whether I said it or I didn't.

Q. Let me see if I can refresh your recollection. Do you remember that the first question asked on cross-examination was:

"Q. How many other convictions have you had against you, Mr. Mishel? A. Pardon me?

"Q. How many other convictions have you had? A. Just one.

"Q. And that is a ten to twenty conviction? (194) A. I have a Government conviction also.

"Q. A Government conviction also? A. Yes.

"Q. I see. How many convictions have you then? A. Two."

That wasn't true, was it? A. I could have been mistaken.

Q. But that was not true, whether it was a mistake or not. Isn't that the fact?

Mr. Hallinan: I think we are getting argumentative. He has the testimony here. He has the testimony there. He can argue to the jury.

The Court: I think that I will sustain the objection on that ground.

Mr. Rosenblum: I don't have the testimony unless I put it in.

The Court: Do you want to ask him whether he so testified?

Mr. Rosenblum: That is right.

The Court: That isn't what you asked.

Mr. Rosenblum: I am sorry.

Q. Can you tell us whether or not it is a fact that this question was put to you and you made this answer:

(195) "Q. I see. How many convictions have you then? A. Two."

Did you so testify? Will you please answer that yes or no if you can? A. I don't remember.

Q. Did you, Mr. Mishel, in addition to talking with Mr. Wissenfeld on any occasion talk to other inmates at the Eastview County Jail in Westchester in which you told him of a deal that you had for testifying in this case?

Mr. Hallinan: I will object to that unless he directs the witness' attention to one specific person, which I understand is the rule under, I think it is, the Chicago case. It is 137——

The Court: One particular conversation, you mean?

Mr. Hallinan: You are supposed to direct the witness' attention to the specific person if you are trying to show testimony through that person.

The Court: I am not sure I understand either the question or your objection.

Will you read the question?

(Question read.)

Mr. Hallinan: My objection is that the proper (196) procedure is to direct the witness' attention to a specific person and then ask the witness, "Did you make this statement to that person?"

The Court: I am going to sustain the objection as to form, not necessarily on the ground which you urge.

Mr. Rosenblum: Exception.

Q. Did you tell Wissenfeld that you were interviewed by agents at the FBI at Sing Sing? A. I don't remember what I told Wissenfeld.

Q. You did say that you believed in or about 1951 you made a statement with reference to this case to Mr. Milenky? A. I didn't say that.

Q. That is what I understood it to be. A. No.

Q. Well, tell us then— A. See, you were asking about statements. I made several statements, as I said. The first statement I made to Mr. Milenky was in the Bronx County Jail.

Q. When was that? A. 1953.

Q. That is the first statement you made to Mr. Milenky? A. That is the first time I ever met Mr. Milenky.

(197) Q. I may have misstated that. I think you said you made a statement to Mr. McAvinue? A. I did.

Q. Prior to the time you made a statement concerning this case to Mr. McAvinue, did you make a statement concerning it to any other living being? A. I don't remember.

Q. See if you can think back and in particular I direct your attention starting with February 16, 1950, or February 20, 1950, which you identified as the date of the last cashing. When, after that time for the first time, did you make a statement, either oral or in writing, and tell us if it was oral, whether it was recorded by the person you made it to, with reference to the facts in this case which are at issue before this Court and jury? A. I don't remember.

Q. Can you give us any approximate date? A. It is hard to say. You are asking things that happened six, seven, eight years ago. I don't recall it.

Q. You don't recall things that happened six, seven or eight years ago? A. Certain things that stick out in my mind I do (198) recall, and I recall them just as if it happened yesterday, and others I can't.

Q. There are just certain things you can't recall. Is that it?

Mr. Hallinan: I object. That was the witness' answer and it does not have to be repeated.

The Court: I will sustain the objection.

Mr. Rosenblum: I will withdraw it.

Q. Did you make any statement to Secret Service Agent Sershen in connection with the Chernoff bonds? A. I don't remember if I did or I didn't. I remember he was one of the arresting officers, but whether I made statements to him or not, I don't recall. I know who Mr. Sershen is.

Q. If you made a statement to him, was it the truth? A. I don't recall if I made a statement to him.

Q. If you did make a statement, if it should develop, would it be a true statement?

Mr. Hallinan: I object to that as hypothetical and speculative.

The Court: Objection sustained.

Mr. Rosenblum: Exception.

Q. Do you flatly say that you did not make a (199) statement? A. I didn't say I did or I didn't. I just don't remember.

Q. That is, you may have? A. I don't remember one way or the other.

Q. That is, you may have and you may not have? A. I just don't remember.

Q. See if you recall whether you made a statement to Mr. Sershen orally, not in writing. A. I don't remember.

Q. When did you meet Mr. Sershen for the first time in your life? A. When he arrested me.

Q. And that was? A. When I got arrested.

Q. What is the date? A. Sometime in 1950.

Q. Don't you remember the exact date? A. Oh, if I get my records, I could remember the date.

Q. Don't you remember this morning you gave the date of October 6, 1950?

Mr. Hallinan: No, it wasn't this morning.

Mr. Rosenblum: Today, this morning.

(200) A. If I gave it this morning, that was the right date.

Q. You don't now remember whether October 6, 1950, is the right date? A. Yes, it is the right date now that you refresh my memory.

Q. Well, did you get that particular date from anyone just before you testified so that you remembered it three hours ago?

Mr. Hallinan: I object. The record will indicate that I put, without objection, this specific question to the witness, "Sometime in October of 1950 were you arrested by secret service agents?"

The Court: I will overrule the objection anyhow.

Q. Did you talk with anyone before you testified this morning about the date on which you were arrested by Agent Sershen? A. No.

(201) Q. Now you say you made bail on that date, which you say you now recall, in the light of my bringing it to your attention, October 6, 1950, is that right? A. That is right.

Q. When for the first time— A. I can hear you. Step back.

The Court: You just answer the questions. If I want——

Q. I wasn't raising my voice. I just happened to want to walk a couple of steps.

I didn't raise my voice. I certainly shouldn't be admonished by the witness as to whether I should step back or not.

The Court: I am trying to explain it to him. You just take care of answering questions.

The Witness: I can hear him.

The Court: And leave everything else to me. All right. Go ahead.

Mr. Rosenblum: Would you please tell me how it started?

(Record read.)

Q. (Continuing)—after that date, October 6, 1950, did you speak to the authorities, any Federal, (202) State,

County, with reference to the Chernoff bonds? A. I don't remember when.

Q. Would you recall whether you spoke at all to any person that I have just indicated, either Federal, who was an authority either for the Federal, State or County, with reference to the Chernoff bonds in 1950, the rest of that year? A. I remember in October of 1950 when I was arrested they asked me about them and I refused to answer any questions to them.

Q. After that, tell us when for the first time, if there was a time. A. I don't remember, I don't remember.

Q. Don't you remember any of the things which occurred in 1947 or '48? A. I don't remember.

Q. Don't you remember anything about what you did in 1947 or 1948? A. I don't remember.

Q. You remembered you spoke with Mr. Gallagher, didn't you? A. Those points stick out in my mind.

Q. Those points stick out in your mind.

(203) Mr. Rosenblum: May I stop at this point?

The Court: We will resume at 2.15. Don't discuss the case among yourselves or with anybody else.

(Jury retired.)

The Court: I thought the witness was going to say something.

The Witness: All right, that is all right.

The Court: All right.

(Recess to 2.15 p.m.)

(204)

AFTERNOON SESSION

(The following proceedings were held in open court out of the presence of the jury.)

*Colloquy of Counsel*

Mr. Hallinan: Your Honor, before the jury is called in I should like to request permission for the witness Mishel to be brought in and out of the presence of the jury make a statement to your Honor, which I think he is entitled to make, concerning his refusal to answer one of the questions this morning.

The Court: All right.

Mr. Hallinan: I think it should be on the record, and I think you should be aware of it.

The Court: As he went out he started to say something and he changed his mind. And, as I say, I haven't taken any step of my own momentum here, I don't think, because I didn't want to upset the flow of cross. If you want me to compel him to do anything, why, one or the other of you, make an appropriate motion and I will do it.

Mr. Hallinan: May we have the witness Irving Mishel in?

Mr. Rosenblum: May I say this. I don't (205) want to make a speech. But it was quite clear that this man instead of answering questions yes or no, he was just making statements and I know I could have moved to strike it out. I may not have heard all of it. But that it was not responsive. I don't want you to feel as though I am doing——

The Court: You make whatever motion you think appropriate and I will make the ruling that I think appropriate.

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IRVING MISHEL resumed.

Mr. Hallinan: May the record indicate the following, that the witness Mishel is about to make

a statement and this statement is out of the presence of the jury.

The Court: The record already indicates that. Go ahead.

All right. Speak up so that everybody can hear you. The defendant has to hear it, too.

The Witness: Your Honor, I am presently located in West Street and last night I was threatened there, I was threatened by three different people. And this man—first of all, I want to apologize for not answering the question, and that was the reason (206) I didn't want to answer it, because what he asked me about involves West Street, where I have testified in that case, something that took place originally in West Street that I attested to in Brooklyn, and that was why I was so reluctant to answer it. After all, I have two small children and a wife, and I fear bodily harm there.

The Court: Well, in that respect I think we will have to get our ground rules set, and that is that when you are asked a question and I direct you to answer it that you must answer. Now, if there is some particular reason known to you why that answer should not be requested, I don't mean a subject of law but if as to a fact which you know that none of us know, why, then you ask to speak to me out of the presence of the jury, or you can ask if you can consult with the Court. Now it is obvious to you that you shouldn't do this very often.

The Witness: No, it won't happen.

The Court: But if something like that comes up, why, you may do that.

Now as far as West Street is concerned, I think that the United States Attorney must take appropriate steps to see that Mr. Mishel is kept (207)

separate from not necessarily everybody but at least the particular persons who he believes are attempting to press him one way or the other.

Is there anything further that anybody wants to say at this time?

Mr. Hallinan: I should like to make something clear, that the witness informed me he has specific reference to the interrogation on *United States* v. *Fox* because Fox was at that time incarcerated in West Street with the witness and he is presently incarcerated there.

The Witness: No, he is not there right now.

Mr. Hallinan: You.

The Witness: Yes, I am.

Mr. Hallinan: The witness is presently incarcerated there.

(208) The Court: In other words, he doesn't like to testify as to something he did on the basis of what happened in West Street while he is at the moment in West Street.

Mr. Hallinan: Yes.

The Court: I appreciate his difficulty. On the other hand, I thought we had to go into that as to acts bearing on the issue of general veracity, and I want to give the cross-examiner a free hand to at least the point when it becomes cumulative. I think we are through with the Fox situation anyhow. So as other things develop, we will see what we have to do.

(Jury in box.)

Cross Examination Continued by Mr. Rosenblum:

Q. Mr. Mishel, you told us this morning about your conviction for the assault in 1945. Do you remember that? A. Yes, sir.

Q. After that time and until you came into possession of the Chernoff bonds, were you committing any crimes? A. Yes, some crimes were committed.

(209) Q. During what years? A. I don't recall the years, but I was a bad boy.

Q. I don't want to go beyond your being a bad boy. What other crimes were committed that you can tell us about between 1945 and 1949 that you brought to the attention of any particular persons?

Mr. Hallinan: I will object to this as being very general. I cannot properly phrase an objection unless it is specific, and if that particular subject matter is relevant by your Honor. I will object to such broad and all-inclusive questions.

The Court: I will let him answer, that yes or no, and then when we come to the question of particularity, we can pass on the situation as it arises.

Q. I think you said the answer was yes? A. I believe I did.

Q. Is the answer yes? A. Can I hear the question again?

Q. You told us about the time when you were convicted in 1945—A. No, I wasn't convicted in 1945. That was assault.

(210) Q. What was that? A. Assault in 1945.

Q. That is what I said. A. Yes.

Q. You were convicted for that, weren't you? A. Yes.

Q. Then I brought to your attention that you gave us a date when you came into contact with these Chernoff bonds. Do you remember that? A. Yes, I do.

Q. My question was: Can you tell us whether or not, say, from 1945 after you were convicted, up to this time you received the Chernoff bonds, you were a good, decent, honest business man?

Mr. Hallinan: I think he has answered that, your Honor.

Mr. Rosenblum: I am changing the form.

Mr. Hallinan: He said he did commit other crimes during that period.

The Court: What is the question?

(Question read.)

Q. Can you answer that yes or no?

The Court: I will sustain the objection to the form. Go ahead. Now get down to what you want.

(211) Mr. Rosenblum: I will go back to the first question if I may.

Q. Between 1945 and the time when you came into possession of the Chernoff bonds, which you fixed as a time in 1949, were you committing any crimes? A. Yes, many crimes.

Q. What is that? A. Yes.

Q. Can you tell us when that was? A. Right through until I was apprehended.

Q. No, I am not talking about after 1949. I am talking between 1945 and 1949, the period when you received the Chernoff bonds. Were you committing crimes during that time? A. Yes.

Q. Can you tell us when? A. All during that time.

Q. Can you tell us whether it had to do with bonds? A. Some had to do with bonds.

Q. When I say bonds, let me put it to you this way: That is, bonds that had been stolen or forged? A. I am not sure whether they were forged, but (212) they were stolen bonds.

Q. Can you give us the year in which you had something to do with the stolen bonds? A. I would say it was right around 1949 also.

Q. Was it before the end of 1949, before the Chernoff bonds or after? A. I would say before the Chernoff bonds.

Q. And was there more than one occasion? A. I would say there was more than one occasion.

Q. About how many occasions? A. I think there was one or two just about the same time as the Chernoff bonds.

Q. Aside from those two, which were about the same time, were there any before the Chernoff bonds? A. I can't remember. All I can remember is certain sets of bonds that were cashed. I cashed lots of sets of bonds.

Q. Let me put it again to you: The sets of bonds that you cashed, did that take place before the date that you fixed when you say you received the Chernoff bonds, which I think you said was a day or two before December 29, 1949? I am not certain as to one date or another. A. Well, I recall about the same time. (213) It could have been before. It could have been after. There was a $5000 bond that was cashed.

Q. Was that the only occurrence? A. I recall another occurrence that was five $1000 railroad bonds that were not cashed. They were negotiated or loaned against or something. But I can't place dates exactly when those things took place.

Q. Would you say from the time of your trouble in 1945 until the time which you fix as at or about the time when you received the Chernoff bonds, you were a decent business man? A. I didn't say that. I never said I was decent.

Q. You never said you were decent? A. No, sir.

Q. Then I will take it out. You were just a business man who was not committing any crimes? A. I was committing crimes when I was cashing checks.

Q. You were committing crimes when you were cashing checks? A. That is right.

Q. Were any of those forged? A. The checks were not forged. The makers (214) were there, but the payees—I don't know if you would call it forged, but we were putting through these phoney or stiff accounts, as I ex-

plained once before, through the Pennsylvania Exchange Bank. This was going on for years. It wasn't for a day or a week that we cashed them.

Q. Did you have some accounts in the National Safety of the same kind?

Mr. Hallinan: I object to this. We are getting into matter that we discussed previously, and I won't extend my discussion any further but if your Honor wishes me to, I would approach the bench and offer my further reasons for it.

The Court: I think counsel are generally aware of my overall position. I will overrule the objection to this question, but I don't want you to think we are going much beyond it.

Read the question back.

(Question read.)

A. I personally did not have any phoney accounts. I had legitimate accounts in the National Safety Bank.

Q. Whom were you referring to who had the phoney accounts?

Mr. Hallinan: I object to this question or (215) any further questions along this line. I don't see what possible relevancy they could have.

The Court: I will sustain the objection as to form.

Q. Take the Young account that you testified about. Was that your account? A. It was one of the accounts we used to cash checks.

Q. Was it your account? A. Well, I caused it to be opened.

Q. Did you cause any similar kinds of accounts to be

opened at the National Safety Bank? A. Not that I can remember.

Q. No memory as to that? A. I know we had accounts at the National Safety Bank, but I believe they were all of living people, people that were in existence.

Q. And didn't you have any accounts at the Pennsylvania Exchange Bank of people in existence, living people? A. I had more people not in existence than in existence.

Mr. Rosenblum: May that part which is not responsive be stricken out?

(216) The Court: I will strike out the answer.

Read the question, and then you answer the question.

(Question read.)

A. I did.

Q. At the time when these accounts that you referred to yesterday as "stiffs" were in existence, were you connected with the Zenith Enterprises? A. That is not the right name.

Q. Give me the right name. A. Zenith Associates, Inc.

Q. Is it Inc.? Was it a corporation? A. Yes.

Q. The correct name then would be with the "Inc.", right? A. That is right.

Q. Tell me just what was Zenith Associates, Inc. A. It was a corporation of me and some lawyer by the name of Joseph Paige.

Q. You and Joseph Paige? A. That is right.

Q. You both owned that corporation? A. We were stockholders in it.

Q. And you were the only stockholders? (217) A. Well Joseph Paige organized the corporation. He is a lawyer, and exactly how many other officers or stockholders he had originally, I don't know.

Q. You mean those originally when the corporation was formed, but you had the interest, you and Joseph Paige? A. My wife and Joe Paige were partners in it actually.

Q. Your wife? A. Helen Mishel.

Q. You were not? A. I was at one time and at one time my wife was.

Q. So that really your partner was Joe Paige? A. That is right.

Q. Tell us whether it isn't the fact, in connection with the counts which you described yesterday as stiff accounts, that you used those accounts in order to deceive Joe Paige? A. No, that is not a fact.

Q. Tell us whether it isn't the fact that you would get phoney notes and have these discounted at Zenith's telling Paige that they belonged to someone else or that they were notes from bookmakers, and (218) then give the place where they could be checked as to whether they have an account, an account at Pennsylvania Exchange Bank. A. We used to loan money to bookmakers and hoodlums and wise guys, and we would use an account to clear it through so that they would pay them back—we would lend them some money for a year or six months or three months, and we would use sometimes one of those accounts to clear it through because we have a line of credit with that bank.

(219) Q. In which bank? A. In National Safety Bank.

Q. Is that the one that lost $180,000 to the Zenith Associates?

Mr. Hallinan: I object to the question. May we approach the bench?

(The following proceedings at the bench out of the hearing of the jury.)

Mr. Hallinan: As your Honor surmised this morning, and correctly, any of these interrogations

that relate to another bank the Government is fully prepared to go into an extended rebuttal of anything that they bring in here. I think that for all the reasons your Honor offered this morning I will not voice any objection to any interrogation of this witness with respect to the Pennsylvania Exchange Bank if he limits his interrogation to that. The moment he gets off into these other banks we are off into about fifteen very extended and lengthy interrogations, from the viewpoint of the defendant and the Government.

The Court: How much further do you want to go?

Mr. Rosenblum: I just want to establish from the information we have that he used these accounts (220) in the Pennsylvania Exchange Bank in connection with the operation of Zenith Associates, so that when he gives the story about these accounts coming into being, in part they were used for himself to put through phony accounts without knowledge of his partner.

The Court: Aren't we getting off into a collateral question?

Mr. Rosenblum: I don't think so. He has brought in this matter of stiff accounts. I didn't open it.

The Court: That only showed how the relationship began. That was the only significance of that.

Mr. Rosenblum: I think it left a much different impression, that there was something sinister, if he opened these accounts——

The Court: Let us go in the robing room.

(To the jury) I will ask you to just wait there for a second while we get this snag unraveled.

(The following took place in the robing room.)

The Court: Go ahead, Mr. Rosenblum.

*Colloquy of Counsel*

Mr. Rosenblum: The information we have is that these accounts which were opened by Mishel were opened, that is, the ones he refers to as stiff accounts, for, among other purposes, in order that he might have (221) a vehicle of putting through phony notes which he would represent to his partner, Joe Paige, in Zenith Associates, Inc. as notes received from bookmakers when in fact they were notes that he personally put through and in order to get the money by discounting these notes with Zenith Associates he made the remark that there were certain accounts so that then if Joe Paige, being advised of this note, that it was brought in allegedly by some person, Joe Paige would be told that that person whose note was put through had an account at the Pennsylvania Exchange Bank, so that when he called up the bank to see if Tom Young had an account, or whatever the name was, he would say yes, and Joe Paige, his partner, assumed that they were accounts of some outsider who was really borrowing money, another bookmaker. Now, the fact is that this vehicle was used in such a way that, together with other things which occurred it cost the National Safety Bank $180,000.

The Court: I don't see how that has any bearing.

Mr. Rosenblum: Not the 180.

The Court: Whether it was 180 or 8 or 800.

Mr. Rosenblum: The only question is the opening and the use of these accounts.

The Court: In other words, the loss on the (222) National Safety Bank has no bearing on the particular thing you are asking about, whether it was a loss or not.

*Colloquy of Counsel*

Mr. Rosenblum: I will withdraw that. As I said——

Mr. Hallinan: Your Honor, so that this may be clear, I will make this statement, since it is pin-pointed at this time in the trial, I should like to have the record very clear as to why I am offering testimony on the stiff accounts. There are three reasons. I outlined them because I expected, frankly, an objection during my opening statement, but since it is pin-pointed here I will go into it.

Mr. Rosenblum: You expected me to object? You should——

Mr. Hallinan: First the motive, which your Honor will understand, the Government never has to prove but is always entitled to prove, and by motive I mean that if Miller told the truth to the Treasury Department he would have opened up to investigation the entire relationship between Miller and Mishel. By truth I mean these bonds were cashed improperly. That would have opened up an entire investigation between these two people. So his motive in making the false statement was to protect himself and cut off this entire area of investigation.

(223) The second reason is that the circular letter sent out by the Treasury Department, as I said in my opening statement, required two things before the bank will be held free from liability: 1, that the customer be reliable, of known and reliability and integrity; No. 2, that the relationship between the customer and the person he identifies be equally as sound. Both conditions have to be present within the meaning of that circular before the bonds can be properly cashed. We offer this evidence to show that directly related to our case,

and we believe very relevant, the first condition couldn't have existed because if Miller knew of these stiff accounts and of the particular illegal operation, he must have known of the lack of Mr. Mishel's integrity. Thirdly, and perhaps most directly relevant to this particular case is the fact that one of the names on one of the stiff accounts was utilized in this very operation.

The Court: All right.

Mr. Rosenblum: May I add, in view of what you said: Of course the argument which Mr. Hallinan just made is predicated upon something which he says to your Honor as though he knows it to be the fact. That Mr. Hallinan knew it to be the fact I will accept (224) it. It is his belief.

The Court: Yes.

Mr. Hallinan: That is all I can say.

Mr. Rosenblum: I say it is his belief. But I don't think it should be said as though the argument is predicated that if he knew or if—certain circumstances were actually facts, that then some other thing could have occurred, because I don't think we can predicate an argument upon that. That will be for the jury.

The Court: As to what we will ultimately find on that, we don't have to gross that bridge now. He just wants us to appreciate what he thought the relevancy of the testimony was so far as it bears on the present problem. You want to show that these accounts weren't opened to assist work with bookmakers and, whatever he says, wise guys, but that they were opened as a device for another purpose.

Mr. Rosenblum: Not for that alone. I say one

of the reasons for which it was used. Also, I won't agree with Mr. Hallinan's statement that these accounts were opened with the knowledge of Mr. Miller, that they were so-called stiff or phony accounts.

The Court: That will come down to a conclusion we draw from the record.

(225) Mr. Rosenblum: That is right. That will be the ultimate fact.

The Court: The only question I am trying to figure out now is what relevance the National Safety situation has. In other words, whether he was using these for one improper purpose or another is of any significance in this case and what the actual purposes were. I will allow the examination on the question of the National Safety account in so far as it is on the stiff accounts allegedly opened in the Pennsylvania Exchange Bank. I mean, in so far as it bears upon the financial transactions thereby represented. But I don't want to get off into it any further than we have gone as to prior vicious and immoral acts. In other words, I don't want to start showing parallels as we discussed this morning.

Mr. Rosenblum: You don't want us to show that Mishel may have done the same thing in a number of other banks?

The Court: That is right, for the reasons that I gave you this morning, subject to your further research and your giving me a more detailed offer of proof.

(The following proceedings took place in open court in the presence of the jury.)

(226) By Mr. Rosenblum:

Q. Mr. Mishel, without going into details, see if you can answer these yes or no: Did you have any so-called stiff accounts in the Modern Industrial Bank?

Mr. Hailinan: I will object to this question, your Honor.

The Court: Well, may I see you at the bench for a minute?

(The following proceedings took place at the bench outside of the hearing of the jury.)

Mr. Rosenblum: The testimony on his direct was as though it was sinister, the fact that when he said he obtained these signature cards from Mr. Miller, as proof that these cards could be obtained in these other banks and they were obtained from other banks and opened accounts in them and could be readily usable.

The Court: I sustain the objection on that.

Mr. Rosenblum: In other words, our offer of proof shows that we are trying to establish, that is, one of the things we are trying to establish is the fact that he opened accounts of this kind in Modern Industrial Bank.

Mr. Perry: There were four or five.

(227) The Court: If one hundred other banks followed the practice of stiff accounts I don't think that has any bearing on the issue in this case.

Mr. Rosenblum: No, no. You are assuming that now. Just like you are——

The Court: I don't know anything about that. You are not going to draw that out to find out——

Mr. Perry: But you can show a practice, your Honor.

Mr. Rosenblum: And the ease with which he was able to get these cards so that he could open these accounts without the bank knowing.

The Court: No. I won't get off into a number of independent banks in that respect. I will sustain the objection.

Mr. Rosenblum: Exception.

(The following proceedings took place in the hearing of the jury.)

Q. Now, you testified yesterday with reference to your having knowledge of stolen bonds which later were referred to as bonds in the name of the Chernoff family. Do you recall that? A. Yes, sir.

Q. I think you testified to that on your direct (228) examination. Do you remember? A. Yes, sir.

Q. Now, can you tell us how you learned of the existence of those bonds? A. I learned of the existence of those bonds through Frank Pace and Mickey Rosenberg.

Q. They both told you about it? A. Well, Mickey told me that there was some hot bonds to be gotten, and when we met Mickey, I and Frank Pace, he showed me the bonds in the name of Chernoff.

Q. So that you say that you first heard about these bonds from Rosenberg? A. And Pace.

Q. Well, which one was it? Did you learn it from both at the same time? A. I don't know which one came first, but I know I learned it through them that these bonds were available.

Q. Where was it that you learned of this? A. Originally it was on a loft just west of Broadway, on 42nd Street, that I had met Frank Pace and Mickey Rosenberg. Mickey Rosenberg took me to meet Pace and he told me some kind of story about he had some bonds over in Jersey that were stolen and that the fellow that stole them was in jail but he would be able to (229) get them and it never

came about that he got them. A little while afterwards Mickey called up. He said, "Listen, we got to meet Frank Pace down on Prince Street, Prince and Thompson Street." There I met him and he told me had some bonds, he showed me bonds, and that is where I got——

Q. So that the fact is that you learned it from what you just said from Rosenberg? A. And Frank Pace.

Q. First you heard it from Rosenberg? Will you answer that yes or no? A. Yes, I learned it from Rosenberg and Pace.

Q. Will you tell us whether or not it is your testimony that you learned it from Rosenberg and Pace at the same time, at the very same time? A. Well, I learned from Rosenberg that there were some bonds, and the name of the bonds I saw myself when I met Pace in this little cafe on the corner of Prince and Thompson Street.

Q. So that you first heard of the hot bonds from Rosenberg and later you got the name when you say you and Rosenberg met Pace? A. That is right.

Q. How long had you known Pace? (229a) A. A short time, maybe three months or so. I met Pace through somebody else also, a fellow named Lewis.

Q. Go ahead. A fellow by the name of— A. Louis Leone.

(230) Q. Louis Leone? A. Yes.

Q. And can you tell us when you met Pace with Rosenberg? That is, when you and Rosenberg met Pace as you described to us a few moments ago. A. I met him sometime in September of this year or maybe a little before the year, 1949. You see, there was a meet made by this fellow, Louis Leone, who had a florist up in the north end of the Bronx. He arranged a meet with Pace for me and Mickey Rosenberg because this Louis Leone's brother—I don't know his first name— and Frank Pace were booking horses on 37th Street and Broadway. They have a cigar stand in the building on the northwest corner of 37th Street and Broadway.

Q. Can you help us? You said it was either in September or a little before when you met Pace? A. Some time before the Chernoff bonds I met Pace.

Q. I think you fixed the date as September or a little before. A. I could be wrong on the date, but I can't be wrong that I got them through Pace.

Q. And you say that your best recollection would (231) be that it was either about September or a little earlier? A. Some time. I just can't recall exactly when I met him, but I know I met him and we discussed it, and I told him I would have to show them to my man, if he likes them, okay.

Q. Are you sure it wasn't five months before September 1949? A. I can't say when it was.

Q. It might even have been before that. Isn't that so? A. I don't think so, but——

Q. Would you say it isn't? A. I can't say yes or no because I am not sure. I remember meeting him, but exactly when in 1949 I don't know, but I did meet him in 1949.

Q. Is it because of the lapse of time that you say you can't give us a more exact date? A. I just can't remember. I have been in jail close to four years, and jail seems to change your outlook of time—not fact, but time seems to flee.

Q. The fact of time, does that change too? A. Fact don't change, but time seems to change.

(232) Q. The fact is you met a person at a certain time? A. I met him. I know I met him in Cavalier's Restaurant at one time too.

Q. Would you say it might have been in 1948? A. I don't think so. I think it was in 1949.

Q. You said before that between the time of your conviction in 1945 and the time when you learned of the Chernoff bonds, you may have been committing crimes in connection with some checks, right, but had you been com-

mitting crimes in connection with any stolen bonds or forged bonds? A. I think there were some stolen bonds that were——

Q. When? A. Just about that same period. Whether it was a little before it or a little after, I can't remember. I think it was before that there was a $5000 negotiable bond. I couldn't be sure of the exact date.

Q. Did you push that one? A. Well, I caused it to be pushed, as you phrase it.

Q. And was that in New York City? (233) A. That was at the Pennsylvania Exchange Bank.

Q. What did the Pennsylvania Exchange Bank have to do with it? A. Shall I describe the details?

Q. Tell me. I asked the question. First, whom did you talk with about that bond? A. Mr. Miller. I called him on the phone. I says, "Hello, Jim." I says, "I got a $5000 negotiable bearer bond, coupon bond. I would like to get it cashed." He says, "What's the story with it?" I said, "It is a little bit long." He says, "Give me the numbers on it and I will call you back." So I gave him some numbers of the bonds. Each coupon had the same number. There were 12 or 14 numbers, one after each other. He called me back at the office and he says, "All right, send it over and I will see that it is cashed for you." So I called Sam Siegel into my office—he was one of my messenger boys—and I says, "Take this over to the bank and give it to Mr. Miller. And Mr. Miller if he is not in said give it to Mr. Littlefield and he will take care of it for you."

I sent over this $5000 negotiable bond (234) to the bank, and about 15 or 20 minutes later, Sam called me up. He said, "Listen, Littlefield knows all about this, but you won't get the money until the next day." I says, "All right, leave it there and come on back." The next day the kid went and picked up about $5040 or something around that.

Q. Were these discussions with Mr. Miller or with Mr. Littlefield? A. These discussions were with Miller.

Q. Not with Littlefield? A. What Sam had discussed with Littlefield, I don't know.

Q. What discussions had you ~~been~~ having with Littlefield? A. I have seen him from time to time, but I had no dealings with him whatsoever. I never had more than, "Good morning, good evening," with him practically.

Q. You are sure you had no dealings with him whatsoever? A. Well, I can't recall any specific dealings other than making a deposit, or he would call me up and say one of the accounts is short or one of the (235) checks is coming back, or something of that sort.

Q. Isn't it a fact that this deal you have just described was with Littlefield that you are now trying to stick on Miller? A. No, that is not so. In fact, I paid Mr. Miller for that deal after it was consummated and completed, and I didn't know the name or anything about that deal, and when I decided to make a clean breast of things, I told Mr. Malinky of the FBI and several other officers that a $5000 bond went through. The name I did not know. They dug up, I understand, what bond and what name, and I understand the account that was used was the 1937 account, a name that I had never at any time known because I had nothing to do with the bank then.

Q. You say that the bond was negotiable? A. That is right.

Q. Where did the name appear? A. There was no name on the bond as I remember it. The way it said was "Bearer."

Q. What is the name you were just telling the jury about in connection with this $5000 bond? A. When they cashed the bond, they had to use (236) a name for the cashing purposes.

*Irving Mishel—for Government—Cross*

Q. They had to use a name for the cashing purposes? A. That is right.

Q. Did you have that dealing with Mr. Littlefield? A. No, sir.

Q. Did you have any dealings with Mr. Littlefield in connection with opening some of these accounts that you called stiffs? A. Dealings with Mr. Littlefield? Not that I remember. I could have, but I don't recall ever having any.

Q. You say you could have? Would you say you did or you did not? A. I didn't recall ever having any because I took all my business to Mr. Miller. He was the president of the bank, and him and I were pretty close, so whenever I wanted something done, I walked up to his desk, which was practically daily, and I would sit down and he would get it done. I had no reason to go to Littlefield.

Q. Did you know, Mr. Mishel, whether Mr. Littlefield was fired from the Pennsylvania Exchange Bank?

* * * *

The Court: All right, we will take a brief recess.

(Short recess.)

Mr. Hallinan: Your Honor, I don't think I did, but I also wanted to note an objection to the last question on the grounds of relevancy.

The Court: I will sustain that objection.

Mr. Rosenblum: To the last question?

The Court: Yes.

Mr. Rosenblum: Exception.

The Court: Bring the jury in.

(Jury in box.)

IRVING MISHEL resumed.

By Mr. Rosenblum:

Q. Do you know, Mr. Mishel, whether Mr. Littlefield is alive or dead?

Mr. Hallinan: I object to that. I don't (239) think that has any relevancy either.

The Court: I will take it.

A. I believe he is dead. I heard anyway.

Q. I think you said Gallagher is dead? A. I heard that too.

*Irving Mishel—for Government—Cross*

Q. And Kennedy is dead? A. I heard that also.

Q. Can you tell us whether one of the accounts you referred to yesterday was an account named Sam Marco? A. Yes.

Q. Can you tell us whether that was opened on or about December 28, 1948? A. It was opened. I don't know exactly when it was opened. It was opened.

Q. Can you tell us whether it was opened by R. H. Littlefield? A. All I know is it was opened. I don't know who opened it.

Q. Can you tell us whether or not you know whether it was opened by R. H. Littlefield? A. I don't know.

Q. Did you open that account? A. It was one of our stiff accounts.

(240) Q. Did you send down one of these signature cards? A. I did.

Q. Did you ever get signature cards from any other bank?

Mr. Hallinan: I will object to this.

The Court: Objection sustained.

Q. Did you have difficulty in getting signature cards?

Mr. Hallinan: Is he limiting that to the——

Mr. Rosenblum: As a general practice.

The Court: No. We are not going to establish general practice. You may ask about this.

Q. Can you tell us whether or not anyone could go into the Pennsylvania Exchange Bank and get a signature card? A. I don't know.

Q. Then when you say you opened an account, you

Q. And that was what opened the account, right? A. That and a deposit opened the account.

Q. In the case of Marco, did it open with $200, do you know? (241) A. I don't know how much it was opened with.

Q. When did you open the Abe Katz account? A. I don't remember too much about the Abe Katz account.

Q. You testified yesterday that you remembered it. A. I remember the account. It was one of the accounts we used. I didn't say I opened it personally. The accounts I opened personally was the Thomas Young, John Case, Sam Marco, Jack Fineman, Frank Williams. Those I know were opened by me or through me, I should say.

Q. Weren't all these accounts that you testified about yesterday opened through you or by you? A. Not exactly. Some of them were used by some other people, who were associated with us in the check-cashing business.

Q. Yesterday you testified about opening an account in the name of Abe Katz. Will you give us what you want us to know about that account?

Mr. Hallinan: I object to the form of that, your Honor.

Mr. Rosenblum: I will change the form.

Q. Do you recall that you yesterday testified (242) at page 85:

"Q. Did you thereafter open various stiff accounts? A. I did."

A. I recall that.

Q. Did that include Abe Katz? A. That included Abe Katz, but there has to be an answer to it.

Q. Did that include Abe Katz? A. Yes, sir.

Q. Did that include John Whitman? A. Yes, sir.

Q. And you say that you opened these two accounts, Abe Katz, John Whitman, at the Pennsylvania Exchange

Bank? A. Those accounts were opened. They were stiff accounts. They were opened by an associate of mine, who was partners with us in this check-cashing business at 152 West 38th Street. We had a cigar store, and there was quite a few people interested in the place. It could have been one of them that had the account opened. All I said if I didn't make myself clear was that the name John Whitman or Abe Katz was used on numerous occasions for kiting checks, cashing checks (243) and so forth.

Q. In other words, these two were not stiff accounts? A. They are stiff accounts.

Q. You say you used them only for the purpose you just gave. Weren't the other accounts used for that purpose? A. They are stiff accounts.

Q. Were the others used for the same purpose you just gave? A. They all are stiff accounts.

Q. Why do you differentiate between the Katz and the Whitman accounts and the other accounts you referred to? A. Because the other accounts, people who were associated with me in my office did the signing of them. These accounts, somebody else did the signing of, not in my office.

Q. What do you mean did the signing of? A. Of the phoney name.

Q. You mean someone else wrote the phoney names John Whitman and Abe Katz? Is that what you mean? A. Yes, not somebody that was connected with me, like Sam Siegel or Sidney Hack or Norton Schnabel.

(244) Q. How was Sidney Hack connected with this? A. Him and I were partners in the Mishel Wine and Liquor Corporation.

Q. You were partners? A. Yes, sir.

Q. You? A. I was the silent partner. My wife was the partner.

Q. Which was it? A. Same thing.

Q. Did the State Liquor Authority know you were the partner? A. The State Liquor Authority knew that I was in Berkshire Wine & Liquor Corporation.

Q. Did they know you were the partner in Mishel Wine and Liquor Company? A. Did the State Liquor Authority? I don't know.

Q. Did you put it in the application? A. I didn't put the application in.

Q. Did you sign the application? A. I at one time signed an application for a license and was granted a license.

Q. Later on? A. When I bought the store, it was bought in the (245) name of Berkshire Wine & Liquor Company, which was a partnership between me and a fellow named George Zeller. Thereafter, I bought Zeller out, and at the same time I had gone into this finance business. So my lawyers told me that in order for me to be in the finance business, I had to disinterest myself from any liquor stores because we were lending money on legitimate loans to bars and grills, and they have a law in this State that you can only have one interest in a liquor store, and if you have an interest in a liquor store, you can't have any outside interests. But it didn't stop my wife from doing it, so I transferred my assets, equity, whatever you call it, to Mrs. Mishel.

Q. These other accounts like Thomas Young, did you sign the name "Thomas Young" on the signature card? A. I told you, Sidney Hack signed that name.

Q. Who signed the name "A. Katz"? A. I don't know.

Q. Was Abe Katz's account under the control, whether it's a person outside your office or in your office, who signed it, of you? A. Yes, it was.

Q. Did you give Mr. Miller $150 a month on the Abe Katz account? (246) A. On any accounts that were opened after that, he got $150 a month.

*Irving Mishel—for Government—Cross*

Q. Did you give him the $150 on the Abe Katz account? A. I can't say. I don't know if that was in that bank, but any accounts that were in that bank, that we opened, I gave him what he agreed to collect. The ones I am sure of are Sam Marco, I would say maybe $700,000 or $800,000 worth of checks went through the Sam Marco account. Sam Siegel, one of the boys who worked for me, was the one who signed that. John Case, Thomas Young, I am sure of. Jack Feinman I believe was in that ban.

Q. Do you have some doubt? A. No, I believe that it was in that bank. I can't be sure. We had so many accounts there that it is hard to remember them.

Q. Yesterday did you say you weren't sure when you gave some of these names? A. No, I didn't say it. I am still saying the same thing, that so far as Thomas Young, John Case, those accounts stick out in my mind.

Q. You say that you gave Mr. Miller $150 a month in connection with the stiff accounts? A. That is right.

(247) Q. Would that also apply to accounts not in that bank? A. I wasn't talking about that.

Q. Will you answer my question, please? Would that $150 apply to accounts which were not in that bank? A. Only accounts that I was talking about that were in that bank.

Q. And you said yesterday when you first testified about giving him $150 a month in connection with those accounts, you then said that the Abe Katz account was in the bank. A. I believe it was. I am not positive of that, but the other accounts I know were in that bank.

Q. Did you say yesterday that you believe so or you mentioned the names of the accounts which you called stiff accounts in the Pennsylvania Exchange Bank? A. I mentioned the names, but I could be mistaken in one name. It could be another bank. We had so many stiff accounts in the Penn Bank.

*Irving Mishel—for Government—Cross*

Q. You could be mistaken about your testimony, can't you? A. Just about that.

Mr. Hallinan: I object to that.
The Court: I will let that stand.

(248) Q. Is that the only thing you could be mistaken about?

Mr. Hallinan: I will object to this. It is argumentative. He can put direct questions to the witness.
The Court: All right, I will sustain the objection.
Mr. Rosenblum: Exception.

Q. How about John Whitman? A. That was a stiff account.

Q. In the Pennsylvania Exchange Bank? A. I don't know for sure if it was in the Pennsylvania Exchange Bank or not. All I know is it was a stiff account.

Q. You say that your answers are the same as to that, that when you testified yesterday, you did not differentiate as you are doing right now? A. Well, maybe I was misunderstood.

Q. You were misunderstood? A. They asked me names of some stiff accounts. That is what I thought he asked me, anyhow.

Q. Do you recall that you were testifying yesterday with reference to the opening of what you referred to as stiff accounts in the Pennsylvania Exchange Bank, and do you recall th[illegible]he question at Page 86 was put to you:

(249) "Q. Can you recall the names of some of those stiff accounts? A. I could try—John Case, Sam Marco, Thomas Young, Abe Katz, John Whitman, Jack Fienman, Thomas Young, J. H. Newman."

*Irving Mishel—for Government—Cross*

Weren't you giving that yesterday as the accounts which you swore were being opened in the Pensylvania Exchange Bank? A. I misunderstood the question maybe. The ones I am positive about are——

Q. You misunderstood the question. Now, you said that you were told by Mr. Miller to open two accounts, one in the early letters of the alphabet and the other in the last letters of the alphabet. Do you remember that? A. I do.

Q. Do you remember then you referred to John Case and Thomas Young? Case is at the beginning of the alphabet, right? A. That is right.

Q. Young is near the end? A. That is right.

Q. Tell us where Marco is. A. Marco is in the middle.

Q. Right in the middle, isn't it? (250) A. That is right, but Thomas Young——

Q. Tell me what other account balanced off the Marco account. A. None balanced it off at that time because that was the one that was opened.

Q. Tell us about the Newman account. Is that right in the middle, too, "N"? A. I don't recall the Newman account, the details of that. The reason I recall the name of the Case and Young accounts is that they both were opened on the same day with two deposits together, and I think your records will reflect that.

Q. How about the others? By the way, did you go over these records that were made available to you either by Mr. Hallinan or Mr. Milenky? A. The only thing I can say is the Government, Mr. Milenky and everybody else, told me just tell the truth——

Q. Answer my question, please. The question is: Were the bank records and answer that yes or no if you ca - concerning these accounts made available to you before you testified, whether it be a day, week, month, a year or three years ago? A. Yes.

(251) Q. Do you still say that Mr. Miller told you that the accounts have to be opened either at the beginning of the alphabet and at the end of the alphabet? Is that right? A. On this occasion when these two accounts were opened he told me to open them that way, and that is why they were opened together, one in the C and one toward the end.

Q. Is it your testimony now, then, that that only applied to those two and didn't apply to Newman or Feinman or Katz or Williams or Marco or any of the others that were referred to? A. That incident with the John Case and the Thomas Young accounts sticks out in my mind because Sidney Hack signed the two of them together at the same time and they were put through that way, and they lasted a few months, and that was the end of that account.

Q. You told us yesterday about an occasion when you say you were talking with Gallagher, do you recall testifying about it? A. Yes, sir.

Q. Now, tell us, please, think back if you can and give us as positive a date as you can. A. This was in 1946 or 1947.

(252) Q. Not 1948? A. It could have been 1948.

Q. Or 1949? A. I don't think so. It was before that.

Q. You don't think it was possible? A. No.

Q. In other words, your answer then is it could be 1946, 1947, 1948 or 1949? A. No. My answer is 1946 or 1947, possibly the beginning of 1948.

Q. Can't you give us a closer date than a spread of the three years you refer to? A. I can't give you a closer date because I just don't remember exactly when. All I know is I remember the conversation, but exactly when it took place I can't remember.

Q. Is it because the conversation never took place? A. No; it took place.

Q. Then can't you try by either association with some particular things give us a time as to when you say this

conversation with Gallagher took place? A. I just can't pin-point it to a date, but——

Q. Not a day, not a week, pin-point it to a month?

(253) Pin-point it to a year. A. I would like to know when I first opened my account in that bank and I may be able to pin-point it that way.

Q. Would you say that it was the time when you first opened your accounts? A. About that time, maybe a year later, I don't recall exactly. All I know is I had——

Q. Maybe two years later? A. I don't think so.

Q. You don't think so. A. All I do know is I had that conversation.

Q. When you came into the room to see Gallagher, Gallagher and Miller were sitting there? A. No. I believe Mr. Miller walked in while Mr. Gallagher and me were talking.

Q. You say that you remember that detail, that you recall you were speaking to Mr. Gallagher and Mr. Miller walked in; that you recall? A. I recall it because what he said. That is why I recall it.

Q. But do you have a definite recollection of it? A. That is right.

Q. That you recall? A. That is right.

(254) Q. Will you tell us again just what was said at that time—or I will withdraw it.

First tell me, was that the first time you saw Gallagher? A. No. I seen him around that time. I was introduced to him by some people that knew him that I knew.

Q. And about that time, what date would you say you were introduced to him? A. I don't remember. It was quite some years ago.

Q. Well, it goes back to about nine or ten years, doesn't it? A. No. It could go—what is this, 1956?

Q. Eleven? A. No.

Q. Eight? Seven? A. Sometime between 1946 and 1948, somewheres in that period of time.

*Irving Mishel—for Government—Cross*

Q. Will you tell us, please, whether or not you had an appointment to meet Mr. Miller there that day? A. No, I don't recall whether I did or I didn't. All I recall is this conversation that took place.

Q. What part of the conversation made reference to the fact that Miller had just come into the room? (255) A. I don't recall the substance of when he came in, he was going out. All I recall is the conversation.

Q. You said that what was said in that conversation fixed in your mind the fact that he came into the room and wasn't there when you came in?

Mr. Hallinan: No, he didn't say that, your Honor.

The Court: I don't believe so.

Mr. Hallinan: I will object to the form of the question.

The Court: I will sustain it as to form.

Q. Tell us what was said. What did Gallagher say? A. Mr. Gallagher said, "Look here, Jim, this Mishel is with good people, and do what you can for him, do everything he wants here." And, he said, "You can go along with him and do anything he wants, whether it be legal or illegal," or words to that effect. He says, "I know his connections and I know the people he is with."

So Mr. Miller says, "O. K. Bill. I will take care of it." You see, that sticks out in my mind. But the time element doesn't.

(256) Q. Do you remember yesterday that Miller allegedly said, "All right, Bill, I will take care of it."? A. Words acknowledging it.

Q. And then did he walk out? A. He may have stayed for a few minutes or he may have just walked out right after that.

Q. Did you continue to sit there? A. I don't recall

whether I stood there for three minutes or half an hour or went to lunch with Mr. Gallagher; I don't know.

Q. I think you testified yesterday—I withdraw that. Oh, yes, I think you testified yesterday that you said Mr. Miller told you, that is, in connection with the accounts you refer to as the stiff accounts, that you would run it for a short time, close one off and then start another one; is that correct? A. Correct.

Q. Isn't it a fact you had four of those accounts running at one time? A. That is right. I don't know how many, but we had some I mean at one time because we had too much going through them.

Q. So that it wasn't as you said before, that you ran for a short time and then opened another one? (257) A. Yes, we did run them and close them, run them and close them.

Q. In other words, then, you kept some opened when you opened another, other ones? A. Yes, it was up to his discretion, not mine. We did what he told us to do. If he told us to close it we closed it; if he said to keep that open we kept that open.

Q. In other words, he told you what to do? A. That is right. He was the banker; I am not.

Q. Now, you recall a few minutes ago, maybe a few hours ago, you testified that after you got the Chernoff bonds you then—withdraw that.

By the time you had the Chernoff bonds, was this after you had had the talk with Gallagher? A. Oh, yes.

Q. And after he had told you, you say, he had told Miller in your presence, "Go ahead and do everything and anything?" A. Oh, yes.

(258) Q. Regardless of whether it was legal or illegal? A. That is right.

Q. Right? A. Correct.

Q. And you knew that all you had to do was to look

to Miller to put things through, is that right? A. Look to Miller to make a deal, if the deal was satisfactory to everybody concerned, okay.

Q. Now in connection with the cashing of the Chernoff bonds, was there any reason why you had to pick a particular person to sign the name of Chernoff? A. Well, Mickey happened to be available. Mickey just happened to be one who was available.

Q. Well, weren't you always available? A. I was available but I never signed them.

Q. You said you didn't sign them. But you were available to sign them; right? A. Right.

Q. You didn't anticipate any trouble with Miller at the bank, did you? A. I didn't have any trouble.

Q. And still you didn't sign them, did you? A. No, I didn't.

(259) Q. You said you had—in fact, when you wanted them to be signed that, first, Rosenberg wasn't available, was he? A. No, he was available. I called him up and we met.

Q. You made a date to meet him? A. That is right. I used to take him home every night; we used to go running around together.

Q. Will you tell us why you needed Rosenberg to do it? A. Don't ask me. I just used Rosenberg.

Q. I am asking you. So, if you don't mind, please tell us. A. I answered that I used Rosenberg. He signed them.

Q. In connection with six or seven other transactions did you also in each instance use another person other than yourself in signing instruments which you pushed through different banks?

Mr. Hallinan: I object to the form of the question. I think it is much too broad. I think it may

be skirting on the area we had discussed before, so I might request that it be more specific.

(260) The Court: Did you mean to limit that to this particular bank?

Mr. Rosenblum: No.

Mr. Hallinan: I will object.

The Court: I will sustain the objection unless it is so limited.

Mr. Rosenblum: Later I can give you my reasons.

Q. Did you ever, yourself, sign any forged or stolen instrument that you put through? A. I may have.

Q. Which? A. I just don't recall. I may have signed the last one of this Chernoff series. I just don't recall.

Q. But you did sign one in the Chernoff? A. I may have.

Mr. Hallinan: I object to this. He is misstating the witness's testimony.

The Court: The witness has straightened it out.

Q. You say you may have signed, is that right? A. I may have.

Q. Was there any reason why you didn't sign any (261) of the others? A. I don't know. Just that is the way it was done.

Q. You say only because that is the way it was done? A. Just happened to be the way it worked out I didn't sign them. If I signed something I would admit it. No reason to deny it.

Q. Tell me, on this deal on the $6684.50 that you said Miller was supposed to get 10 per cent, how much was Pace supposed to get? A. Pace got paid for his bonds.

Q. How much? A. I think it was either 10 or 15 per

cent of the face value, which was about eight or nine thousand dollars, the face value was.

Q. Can you tell us how much Rosenberg was supposed to get, if he got anything?

Mr. Hallinan: I object to this question. I should have objected to the other one. That is, on the ground of relevancy. How much other people got for the bonds I don't see the relevancy of that to this false statement case.

The Court: I will take it. Overruled.

(262) A. What was the last question?

Q. How much did Rosenberg get? A. I think Rosenberg got about 10 or 15 per cent of the proceeds, the net proceeds.

Q. What percentage did you get? A. About 10 or 15 per cent.

Q. So you had three people who got 10 or 15 per cent. Who got the rest? Four people. Now Miller you said got 10 per cent, you got 10 or 15, Pace got 10 or 15, Rosenberg got 10 or 15? A. I had a partner.

Q. What is that? A. I had a partner.

Q. You had a partner? A. Yes, sir. Who got a piece of it?

Q. Who was that? A. A fellow named Nitzberg.

Q. Nitzberg got a piece of it? A. That is right.

Q. And in connection with the plea you made to Judge Joseph in the Bronx, did you tell him that you set up Nitzberg? Do you remember? A. What?

Q. Did you set up Nitzberg?

(263) Mr. Hallinan: I object to this question. I don't see how, on the face of the question, it relates to the——

The Court: Objection sustained.

Mr. Rosenblum: It is the interest I want to show of this witness.

The Court: I don't think we have to go into his conversation with Judge Joseph in that respect.

Mr. Rosenblum: Exception.

Q. Now, how much did he get? A. 10 or 15 or 20 per cent. We split the money down between us all.

Q. When did you sit down, and tell us the first occassion when you got, you said, eight hundred-odd dollars after the first bond was cashed—do you remember that? A. Yes.

Q. Do you recall that? A. Right.

Q. By the way, do you recall which of the tellers cashed that bond? A. I don't know.

Q. Do you know the tellers there? A. They knew me; I don't know them.

(264) Q. You don't know them at all? A. "Hello" and "Good-bye." I would know them if I saw them, maybe I would recognize them.

Q. That was the only contact? A. "Hello" and "Good-bye."

Q. The only way you knew them, is that right? A. As a normal depositor would know them, maybe a little more, even, than the normal depositor, or I may have known them a little better, but that is all, "Hello" and "Good-bye."

Q. When you say the first one was cashed and you say Mr. Miller gave you eight hundred-odd dollars, I think it was $840, you say you gave Mr. Miller $100? A. Correct.

Q. Tell me, when did you meet with the others to split it down the middle? A. When it was cashed we straightened it out.

Q. The same day? A. No. Listen, we were doing busi-

ness in hundreds of thousands in the check-cashing business, so whenever we got around to it, if some money was due you I would pay you, if money was due this gentleman we paid him, whatever was due to anybody we give him, we cut it up, and that was the end of it.

(265) Q. Did you do it each time after you got a bond cashed? A. I don't recall whether we did it each time or at the end of it. But, in any event, Frank Pace, his money, he was paid right away.

Q. Who paid that? A. Oh, I gave him the money; I met him the next day and gave him money.

Q. How much did you give him? A. 10 or 15 per cent of the face value, whatever that came to, that is what we gave him.

Q. I show you Government's Exhibit 1-A for identification.

Mr. Hallinan: In evidence.

Mr. Rosenblum: Is it in evidence? Yes.

Q. (Continuing) In evidence, and ask you where that name Nat Chernoff was put on that document? A. Vault room or the private cubbyhole of the Pennsylvania Exchange Bank.

Q. Vault room or the private cubbyhole? A. They call it, I don't know what you call it, it is a little room. If I may point it here, I think I could point it out for you.

(266) Q. Would you, please? Was it near Mr. Miller's desk? A. (Witness goes to diagram.) Right here, it was two small private rooms. One of these rooms just about the size of a closet. Mickey was sitting down, he signed—he resigned the bond, and at that time he signed some of these on the proper line.

Q. Is that the place where he wrote this? A. Yes.

Q. You are positive of that? A. Yes, sir.

Q. How about 2, which is in evidence? A. The same thing, the same place.

Q. How about 3? A. No. 3 was signed, the top signature, where it says "Print name"——

Q. Yes? A. —was signed at the time that the Chernoff bonds were signed Nat Chernoff in the office at 570 Seventh Avenue.

Q. When? A. That morning of the cashing of these bonds.

Q. When you say these bonds— A. None of these bonds—the morning of the (267) cashing of the original bond.

Q. How would you fix that date? A. The date of the first bond.

Q. In other words, at that date, if the date of the redemption form is December 29, 1949, you say that that was the day when Rosenberg filled in, signed his name on this redemption form? A. I would say around that—this one here, he signed this one here.

Q. When you say "this one here," you are referring to 3-A in evidence? A. These stamps weren't on. All that was signed was the name Nat Chernoff. Some of them were signed in the wrong line, so Rosenberg came back to the bank, from my office at 570 Seventh Avenue, and resigned the name Nat Chernoff on the proper line. And one bond he took one of these slips and signed the name Blanche Chernoff because there was none signed Blanche. I think you have that some place.

Q. Going right to the Blanche Chernoff one, this one here which was Exhibit 7-A, when do you say that one was signed?

Mr. Hallinan: Just a minute. That does not represent the last one. 8-A would represent the (268) last one on your question.

Mr. Rosenblum: My question referred to the one that has the name Blanche Chernoff.

Mr. Hallinan: I am sorry. I misunderstood. I thought you referred to the last bond that was cashed.

A. This was signed at the same time that the name Nat Chernoff was corrected in the cubbyhole of the bank.

Q. Who signed Blanche Chernoff? A. Mickey Rosenberg signed Blanche Chernoff.

Q. So that these seven you say were signed either the night before the cashing of the first bond?

Mr. Hallinan: No.

A. No, no.

Mr. Hallinan: That was not the testimony.

Q. All right. You tell us when those were signed where there was any correction. A. Where there was any correction they were signed on the morning of the cashing.

Q. On the morning? A. The morning of the cashing, because I had a whole pad of these with the gum side to it. They looked like that on a pad, just like that yellow pad (269) that you are using, and took one off. He signed on the top line Nat Chernoff. Signed another one Nat Chernoff. When I come to the bank I was told that they were signed in the wrong place. So he resigned the name Nat Chernoff on the second line on some of them. Some of them he wrote the name Nat Chernoff on over again. On one of them he wrote the name Blanche Chernoff. The last one I believe I or Sam Siegel signed it.

Q. When do you say that the one with the name Blanche Chernoff was signed? A. I believe at the same time that all the rest of them were signed.

Q. That would be the morning of the day when you say the first bond was cashed? A. I believe so.

Q. When you say all—outside of the last one, seven other forms—the seven other bond redemption forms, were all signed you say on the morning that the first bond was cashed? A. I know that most of them were signed on that morning, but whether the last one, this one here of Blanche Chernoff, was signed that morning or not I can't be positive, but I am positive that Mickey Rosenberg (270) did sign the name Blanche Chernoff.

Q. Where did he sign it? A. In this vault room of the bank. Now, whether——

Q. Do you remember going in there twice with him? A. He was in there 50 times with me, not twice.

Q. In connection with these bonds? A. No, no. We had other dealings that I went to the bank for. I had deposits, sometimes I had to count out the money. I can't stand in the corner and count out the money. So I would walk in there to count it out. Sometimes some of that money would have to go to 38th Street, sometimes some of that money would be going to a bookmaker, part would have to go some place else. So naturally I used that room; I had access to it.

Q. Did you have a safe-deposit box there? A. I did.

Q. Did you have two boxes there? A. I did.

Q. And in what names were those boxes?

Mr. Hallinan: I object to this. I don't know what relevancy this has, your Honor.

The Court: Well, unless you can show some (271) prejudice I am going to let it in, if that is the only objection.

Mr. Hallinan: I have no serious objection.

The Court: Overruled.

Q. Tell us, in what names did you have those two boxes? Tell us, please. A. I know I had a box, I don't

know if it was just Irving or Irving and Helen Mishel. Then we had another box in a phoney name. I believe the name was Robert Benson, something very similar to that. Robert Benson I think it was.

Q. That is the second box you believe was in the name of Robert Benson? A. I believe so.

Q. Is that right? A. That is right.

Q. And the first one was either in the name Irving Mishel or Irving and Helen Mishel? A. Something like that.

Q. Is that right? A. Or it may have been in my name, but my wife had access to it.

Q. I see. And the second one you say was in the name that you believe to be Robert Benson? (272) A. Something like that.

Q. Was it in the same vault in the same bank? A. It was in the same vault but in a different compartment or different area.

Q. Was it within the same safe deposit box, same safe deposit vault? A. It was in the same room or cubbyhole, whatever you call it. But it was in there.

Q. And was it at the 48th Street branch? A. Yes, sir.

Q. Not at the 38th? A. 48th.

Q. Both of them were there? A. Yes, 48th Street branch.

Q. And did you ever open up and empty out the box in the name Irving or Helen or Irving and Helen Mishel? A. No, it was still some stuff in that box.

Q. Never opened? A. I understand that the sheriff's office or somebody has that stuff. There is stuff still in the box.

Q. That is, it wasn't opened in your presence and turned over to the sheriff? A. I don't know. It may have been opened in (273) my presence; I don't recall: it was a long time ago.

Q. Think about it, please. Was this any longer than some of the things you have testified about, going back to 1946 or 1947? A. That didn't interest me.

Mr. Hallinan: I object to that statement and move to strike it out.

The Court: All right. Sustained.

Q. When was it that this box was opened in either your name alone or your wife's name alone or in both of your names? A. I can't just place the time.

Q. Can you give us an approximate idea? A. I just can't place the time.

Q. Would you say it goes back as far as '46 or 1947? A. Oh no, it is later than that.

Q. Would it be within the last three years? A. No.

Q. Before that? A. I would say that took place in the end of 1950 or 1951 or 1952 it took place.

Q. Now go back for a moment to the Robert Benson (274) safe deposit box. Did you empty that? A. No.

Q. Did you have a key to it? Yes.

Q. Did you ever go to the bank and demand the right to open that box? I did.

Q. Was that in the presence of some public official or some person connected with the law? A. It was.

Q. And whose box was that? A. That was one of the fictitious names.

Q. Whose box was it? A. Mine.

Q. Can you tell us whether or not when you came back to open that box with someone who was connected with the authorities or the law was after or before you opened the other box?

Mr. Hallinan: I object again. I did object on the grounds of relevancy and said that I had no serious objection, but I would press the objection now. I don't see what relevancy it has.

The Court: I will overrule it. Go ahead.

A. I don't remember exactly with who I went.

(275) Q. You aren't sure as to the time? A. I can't place this time.

Q. You recall there was an occasion that you went there? A. I just don't remember the facts about it.

Q. Do you remember there was a bank examiner there at the time? A. I don't remember who was there.

Q. Did you open the box at that time? A. I don't remember.

Q. Do you remember claiming that your box was moved out by Mr. Miller? A. I remember claiming that something was wrong with that bank, yes.

Q. Do you remember claiming that the entire line of boxes— A. No, I didn't claim that.

Q. —in which you said the number of your particular box appeared was removed by Mr. Miller? A. I remember claiming that the numbers 430 some-odd, I am just taking a figure that——

Q. Yes, we realize it is not the exact figure but you are taking that as an example. A. I remember claiming that my box was 456, (276) I am just taking that as an example, 449 to 471 was missing and every other number from 1 to a thousand ran in that bank.

Q. You don't remember claiming that Mr. Miller moved out that entire line in the presence of, I believe, your attorney, the bank examiner and some other people, the man who accompanied you, who had you in custody at the time? A. I was not in custody.

Q. You were not at that time? A. No, sir.

Q. Who came along with you? A. I don't remember.

Q. Someone from the sheriff's office? A. I don't remember who went up there. All I remember is in its place there was some letter file like one—a file cabinet, not a vault one, but one letter sized cabinet in its place.

Q. Do you remember claiming at that time that that box was used for the money that you and Miller jointly owned? A. Yes, I do.

Q. Do you remember saying that? A. I remember partly saying that.

(277) Q. When you say partly, what do you mean by that? A. There was also Gallagher had some money in there.

Q. And Gallagher had some money? A. That is right.

Q. You know he is dead now, don't you? A. That is right.

Q. You say that Gallagher and you and Miller had money in that safe deposit box? A. We were partners.

Q. You were partners? A. They gave me an excuse why I couldn't go in there, that the Erickson investigation was going on and I should stay out of the bank while the investigation was on.

(278) Q. You say you were partners? A. That is right.

Q. Did you know that Erickson had accounts in a large number of banks in the City of New York? A. I know he had one there.

Q. Did you know he also had them in others? A. I don't know about others.

Q. Did anybody tell you to throw in the name Frank Erickson?

Mr. Hallinan: I object to this, your Honor—"did anyone".

The Court: Overruled. I will let him answer.

Q. Did anyone tell you? A. No.

Q. You say there was a safe deposit box which was really—had the resources of a partnership, is that right? A. That is right.

Q. And that partnership was made up of Gallagher and

Miller and you? A. Gallagher and Miller had half and I and some other people had the other half.

Q. Did the other people also have access to that box? (279) A. No. Just me and Mr. Miller had access, or Mr. Gallagher, I am not sure which one, have access.

Q. It was either you—you were one of the two; right? A. Yes.

Q. And it was either Mr. Gallagher or Mr. Miller? A. That is right.

Q. Right? A. Correct.

Q. And at the time when you opened that box was it opened in such a way that the access was available to you and either Mr. Miller or Mr. Gallagher? A. Yes, because nobody had to sign nothing to go in there. They give you a key to go in whenever you want; they never signed to go into the box in that bank.

Q. You don't want to infer that you have to sign in every bank in which you go? A. Any bank that is a legitimate bank you do.

Q. You do? Are you sure of that? A. Any other bank I have ever gone into, want to go into the vault, you sign.

Q. You don't know whether banks have a record (280) that they keep of the person who comes to his box and puts the number down to show on their record when the person came in? A. I know you have to sign to get access to the vault room in other banks.

Q. Do you know that to be a fact in all banks? A. I know where I went any time that is what you have to do.

Q. Would you know, and I give you my own bank, say, eight or ten years ago, Irving Trust Company, whether I had to sign my name if I went in there? A. I wouldn't know; I don't know about your bank.

Q. You couldn't say, could you? A. No.

Q. Now, about when was that box opened? A. When we started having deals together. I don't know exactly.

Maybe; I can't place the date, 47, 1948, maybe end 1946, maybe the beginning of 1949, I don't know. But I know it was opened.

Q. So that it would be anywheres from the years 1946, 1947, 1948, or possibly the beginning of 1949? A. Correct.

Q. Right? A. Right.

(281) Q. Can't you give us a more accurate date? A. I can't, Mr. Rosenblum, because I just don't recall when. I know it was opened, that is all I could tell you. I mean, you are asking things that happened ten years ago.

Q. Haven't you been testifying for the last two days about things that happened ten years ago? A. I have attested, but those things stuck out in my mind. This vault, whether I opened it ten years ago, six years ago or two years ago doesn't matter; the point is I did open it.

Q. In other words, you say that that particular thing was so insignificant that it didn't stand out in your mind like the other things?

Mr. Hallinan: I object.

The Court: I will overrule the objection.

A. I just don't remember.

Q. When for the first time did you go to that box? A. I just don't remember exactly when. When I wanted to go there I just walked in and went and took my key and opened it up.

Q. What did you do? Take money out? A. Take money out, put money in, whatever I had (282) to do.

Q. Did you have any record there, left, so that your partners could see what you took out or put in? A. We had some records. I may take something out or put something in, whatever had to be done. There was trust among us.

Q. Do you know whether Mr. Gallagher had a key? A. I can't say for sure one way or the other.

Q. Do you know whether Mr. Miller had a key? A. I know that either Mr. Miller or Mr. Gallagher had one; which one I can't say.

Q. One or the other had a key, in addition to having the partnership with you, one of the two had the right to go to that box? A. Yes, either one of them. I know that either one of them would go.

Q. Do you recall that a day came when you came down there with a key which was different than the type of key used in the entire vault? A. No. I went down there with a key that was used in that vault.

Q. Do you remember there were people there who pointed out to you that the key you said— (283) A. No, sir.

Q. (Continuing)—would open that vault was a key of a different type? A. No, siree, no, siree.

Q. You say that the key was the same as the other key you had? A. Yes, siree.

Q. But you found an entire line of boxes— A. I don't say an entire line now.

Q. How many boxes had been removed including the one that you say you— A. I can't recall.

Q. (Continuing)—and Mr. Miller or Mr. Gallagher had access to? A. I can't recall exactly, but it was the size of a letter file, about that much by about that wide (indicating), had been removed. Maybe it was six boxes, maybe it was eight, I don't know. But in that number there was one missing which I had claimed was mine. And that is all I can tell you about. It wasn't there. And the numbers ran from 1 to a thousand. Every other number was there.

Q. In other words, on other occasions when you (284) went there you saw that they had boxes and they all—all the numbers were there? A. I didn't say. I presumed

they were there. I couldn't say. I never paid attention to anything else. I know I walked over there, put my key in, took out what I wanted, walked into that small cubby hole there, took it out, took what I want, put it in my pocket, or, vice versa, put it back. Pete Kennedy or anybody else was in the bank at the time would open the thing up. There is two keys involved, a key of their and this key. They have to set the lock or something. And you put your key and it opens it, and only your key alone doesn't open it and the bank key alone doesn't open it.

Q. Isn't it a fact that at that time you claimed that a line of boxes had been taken out? A. No, I didn't claim a line. I only claimed a section, a small section.

Q. Can you give us the approximate date? A. I can't.

Q. Give us some date. A. I can't, Mr. Rosenblum.

Q. Was it after you had been arrested? A. I can't fix the date, I just can't.

Q. Was it after you were arrested or before you (285) were arrested? A. I can't fix the date, I don't recall.

Q. For how many years did you have access to that box? A. A few years before that. I don't recall as to the date. I just know it was, when I walked in there, it was mine. And they had kept me out for quite a few months, telling me that the Frank Erickson investigation is on.

Q. You said that before. A. And Hogan's office is——

Q. Do you want to say it again about Frank Erickson? A. I don't want to say nothing.

Q. I ask you questions and you give me responsive answers. Right? Who did you complain to? Did you speak to Mr. Gallagher about this box disappearing out of a vault in a bank? A. Complain?

Q. Yes. A. I don't recall whether I spoke to Mr. Miller or Mr. Gallagher.

Q. Did you speak to either one of them? A. I spoke to somebody. I was beefing, hollering (286) and screaming about it.

Q. That time when you came in— A. That was after I came in, after it was gone, and they told me not to come in, they were pushing me off, don't come in, don't come in, then we came in.

Q. Now, tell us, you say you are positive there was a vault there and a number that you gave at that time and that you later found that that vault wasn't there, that box in the vault wasn't there? A. Mr. Rosenblum, again I say to you I went to that vault not once, I must have been in that vault room a hundred times, never signed in, never signed out. Many a time I bumped into Leonard Erickson, there.

Q. You want to bring in Leonard Erickson. Tell me what is the significance of your mentioning Leonard Erickson? A. You are asking me about what I did in the vault room.

Q. I asked you whether or not you went to that vault and obtained access to the box that you say later disappeared? A. I went in there many a time. I took stuff out, I put stuff in, and I went back there one day and it wasn't there. That is what I can tell you.

(287) Q. This stuff that you are referring to, what was the stuff that you took out and put in? A. Sometimes there would be head checks, bonds, cash; it would be anything.

Q. And these head checks were checks that belonged either to Mr. Miller and Mr. Gallagher and you? A. No, they belonged to me. I left them there because I didn't want them in my box sometimes. I left them there.

Q. You did not want them in your box which you had with your wife? A. Yes, because next morning I may have to give them to somebody or negotiate them for somebody, so I would leave it there and next day I would take them out.

Q. Can you tell us what was in the box which you say you were unable to obtain because a box was taken out of a safe deposit vault? A. Some money.

Q. How much money? A. I don't remember.

Q. Have you any idea as to whether it was a dollar or $1,000,000?

(288) Was it $50,000? A. I don't remember exactly.

Q. You had a half interest in that, you said? A. That is right.

Q. And you want us to understand that you don't recall even the approximate amount that you said you were beefing about? A. The reason I don't recall it is because later on my partners got it straightened out with Gallagher.

Q. You say the reason that you don't remember is because your partners got it straightened out with Gallagher? A. That is right.

Q. How much was straightened out? A. The money that was in there.

Q. How much? A. I don't remember.

Q. Did you ever check up or do you know whether the authorities ever checked up to find whether there ever was a box in that vault bearing a number of the kind you claimed? A. I don't know.

(289) Q. Did you talk to Miller about this disappearance of the box at all? A. I don't remember talking to him.

Q. Did you talk to Gallagher about the disappearance of this box at all? A. I don't remember talking to him either.

Q. Can you tell us whether the proceeds of the Chernoff bonds were in there? A. No. This box had nothing to do with Chernoff.

Q. Was it the proceeds of the money you obtained in the Roanoke deal? A. No.

Mr. Hallinan: I will object to this.

The Court: Objection overruled.

Q. You mentioned before about your partnership. Was Mr. Miller a partner with you in any of the transactions you had at the Bronx bank?

Mr. Hallinan: I will object to this. I think it is an indirect way of getting at what we have already discussed.

The Court: No, I will let him testify as to the relationship with the defendant. I will caution counsel not to go into deals which he hasn't a reason——

(290) Mr. Rosenblum: All right.

Q. Was Mr. Miller and/or Mr. Gallagher partners of you in connection with the transactions you had in the Bronx Bank? And I mean illegal transactions. A. No, he had nothing to do with that.

Q. How about the Bowery Savings Bank?

The Court: Now——

Mr. Rosenblum: It is the same question.

The Court: Come up to the bench a second.

(The following took place at the bench out of the hearing of the jury.)

The Court: Unless you have some basis for really thinking he was, I don't think you should ask him that.

Mr. Rosenblum: This man speaks of his partner.

The Court: That was not gone into on direct examination. He is your own witness in this regard.

Mr. Rosenblum: He said he has a partner.

The Court: I don't want to go off——

Mr. Rosenblum: He is a hostile witness.

The Court: I don't think you should go into other banks where you think he may have committed improper acts. That is what Mr. Hallinan's objection goes to, and I will sustain it on that basis.

(291) Mr. Rosenblum: Exception.

The Court: You don't think Mr. Miller was a partner in any of those transactions, and, therefore, there is no real basis for it.

Mr. Rosenblum: I don't think Mr. Miller was a partner in any transaction, but I do think that this man by his testimony and the fact that he says there were safety deposit boxes in which there was money is leaving the impression and the jury might infer that Mr. Miller was a partner and Mr. Gallagher, or both were partners, in any of these transactions.

The Court: No. The trouble is you got into this yourself over Mr. Gallagher.

I will sustain the objection.

Mr. Rosenblum: Then I will go into another subject.

May we adjourn now?

The Court: Yes.

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(In open court in the hearing of the jury.)

The Court: We have reached almost a unanimous agreement on one point, that we will adjourn now until Monday morning at 10:30. Don't discuss the case with anyone and don't discuss it among yourselves.

(Adjourned to October 22, 1956, at 10:30 a.m.)

(292)

New York, October 22, 1956;
10.30 o'clock a. m.

Trial resumed.

IRVING MISHEL, resumed.

The Court: All right, Mr. Rosenblum.

Cross examination continued by Mr. Rosenblum:

Q. Mr. Mishel, you undoubtedly recall the testimony you gave with reference to a talk you had after you were arrested on October 6, 1950 by Agent Shershen? Do you recall that? A. Yes, sir.

Q. Now will you please tell us whether you were bailed out that same day on October 6th? I think you gave the answer but I am not sure, so I would rather have you tell. A. I think it was the same day.

Q. Was it that day that you went up and spoke to Miller? A. I don't know when it was, but it was some time thereafter.

Q. Well, when you say "thereafter," it may be a (293) long time. Will you see if you can make it a little closer? A. It was some time thereafter.

Q. You mean to say you have no recollection as to when it might be other than to say it was after the occasion when you were released on bail? A. That is right.

Q. Can you give us the date when you think it was? A. Some time thereafter.

Q. That is the absolute best answer? A. That is the best answer I can give.

Q. Is it that you don't recall the date? A. I just don't

remember how much thereafter, but it was a little while thereafter.

Q. Do you remember where you talked with him? A. I believe it was in the Holland House, across the street from the bank.

Q. Is that just your belief or do you know that it was in the Holland House? A. I am not positive where I talked with him, but I am positive I spoke with him.

Q. You mean that is one of those things again that sticks out, the fact that you had a conversation, (294) but you don't recall the other items, is that it? A. That is right.

Q. Because I notice in your direct examination you said, "I think I met him across the street."

Are you sure of that? A. That's where I think I met him.

Q. And you have a definite recollection of being in that restaurant with him? A. I have a definite recollection of meeting him. I said I am not sure——

Q. I would like to have you give me an answer to the question I asked.

Is it just a belief or you think it was at the Holland House, without having a positive recollection of it? A. I don't remember for sure where I met him, but I remember meeting him.

Q. Do you think it might have been that other restaurant next door to the Holland House? A. I don't know.

Q. It might have been? A. I don't know for sure where it was, but I know I met him.

Q. Would you say, then, that you really don't (295) know where you met him but you know you met him? A. That's right.

Q. And you don't know when you met him but you know you did meet him? A. That's right.

Q. That is the best answer you can give us to both those items? A. That's right, sir.

Q. Were you in the habit of going out with Mr. Miller? A. I seen him occasionally.

Q. Did you go out to some restaurant with him? A. I think I went to dinner with him one evening at a restaurant called Quo-Vadis.

Q. You think so or you know so? A. I am pretty sure.

Q. Do you know where Quo-Vadis is? A. Yes, on Madison or Park. It is between Madison and Park Avenue in the sixties.

Q. Was this after the occasion when you were released on bail? A. I don't know when it was. I should say before, I think.

Q. You think? A. Yes.

(296) Q. You don't know? A. I don't know for sure.

Q. In other words, after you were released on bail you were still friendly with him? A. That's right.

Q. Is that right? A. (Witness nods.)

Q. No doubt about that? A. No, no doubt about that.

Q. Tell us whether you went into the bank after you were released. I am not saying now that it was that day, but I mean after the time when you say you met him did you go to the bank and ask him to come out with you? A. No.

Q. Did you telephone to him? A. Yes, I called him.

Q. Do you remember that? A. Yes.

Q. You do remember—not that you believe or you think, but you remember that you called him? A. At some time after that. I don't say the same day I was released, but some time after that I called him and made a meeting with him and I spoke with (297) him. That I remember.

Q. That you do remember; is that right? A. That's right.

Q. Did you ever go out with him on any other occasion other than the time you say the Quo-Vadis and the restaurant that you believe was the Holland House? A. I

had gone out with him before that, before this incident, occasionally.

Q. For dinner? A. Lunch.

Q. Lunch. Where did you have lunch with him? A. Down the street on the same side of the street as the bank on 48th Street there was a nice little place.

Q. Was that during the time that you were a depositor in the bank? A. Oh, yes, I was a depositor.

Q. Was that during the time that you had seven accounts which were legitimate accounts in the bank? A. How many accounts?

Q. Seven. I will count them up and see if you can remember. A. Maybe you can. I don't remember.

(298) Q. Don't you remember? A. I don't know.

Q. Did you have an account? A. I had accounts, but I don't know how many.

Q. Did your wife have an account? A. Yes.

Q. Mishel Wine & Liquor have an account? A. That's two.

Q. Mishel Wine & Liquor have an account? A. Two.

Q. Two what? A. One account was Helen and Irving Mishel.

Q. Two in one? A. One account. That's one account.

Q. Didn't you have one special account? A. Yes, and I had one Irving Mishel Special.

Q. That was aside from the one you had with your wife; right. A. That's right.

Q. And then you had Berkshire Liquor? A. That was three.

Q. And then one time you had Mishel Wine & Liquor? A. That's four.

(298a) Q. And Admiral? A. That's right.

Q. Regal? A. That's right.

(299) Q. That is six, I think it is. And during the time that you were a depositor in the bank you were getting credit, weren't you? A. Sure.

Q. At one time you had credit, did you not, in the sum of $35,900 on your various accounts that I just referred to, at one time? A. Somewhere around that figure, I don't know exactly. About that amount. Maybe a little less.

Q. Maybe a little more? A. Maybe a little more.

Q. It was in that neighborhood, right? A. Somewheres in there.

Q. You say you started with the bank in about 1946 or 1947? A. Around then; I don't know exactly.

Q. Approximately in that area. Up to, say, the end of 1948, did you owe the bank any money that you hadn't paid? A. Oh, yes, we had unpaid loans.

Q. You had unpaid loans, and as they came due you paid them, but your account was all right, was it not, let us say until the end of 1949? A. I don't know. Sometimes it was good. Sometimes (300) it was bad.

Q. Maybe that is true of all of us. A. I don't know.

Q. But you received credit right along during the time, let us say, from 1946 through 1949? A. I guess I received credit. They discounted notes.

Q. Please don't guess, if you don't mind. Would you please tell us? Will you please just answer? I am not telling you how to answer. Will you tell us, please, whether or not you did obtain loans right through 1949? A. They rediscounted people's notes for me right through 1949.

Q. Didn't you obtain any loans on your own? A. Yes, also on my own signature.

Q. Also on your wife's signature? A. Yes, on my wife's signature.

Q. Was that through 1949, 1946, 1948, 1949? A. I don't know when it was from, but it was sometime.

Q. Wherever you started, I was trying to take the date that you said. A. I don't know. It may be a wrong date.

Q. Will you tell us that it started another date? (301) You tell me. A. I don't know exactly when it started.

Q. Can you give us any idea as to when you started? A. I think to the best of my recollection it was 1946 or 1947 I opened up an account——

Q. Starting with—I am sorry. A. Then I opened the account in the bank in 1946 or 1947.

Q. Starting from the time you began in 1946 or 1947 up to, say, through 1949, were you able to get credit and obtain loans from the Pennsylvania Exchange Bank? A. Sometimes yes, sometimes no.

Q. Sometimes they said you had too much and they wanted you to pay? A. Sometimes the paper that I brought in wasn't good at all; the maker of the paper was very bad.

Q. When the credit department reports showed that the papers weren't accepted by the bank you were so informed? A. Mr. Miller would tell me.

Q. And you were so informed? A. It was no good, by Mr. Miller.

(302) Q. By Mr. Miller. And how about 1950? Did you obtain any loans on any of those accounts which I referred to before? A. I think I did in 1950; I am not sure. I think either five or ten thousand dollar loans, I am not sure. It was sometime in that period when I got some moneys.

Q. Do you recall whether you obtained two loans in 1950 for the Pennsylvania Exchange Bank? A. I don't remember exactly when I obtained loans. I obtained loans, many loans from that bank at different times, and times I didn't get loans.

Q. Do you recall whether you obtained loans from the Pennsylvania Exchange Bank on behalf of Mishel Wine and Liquor Company in 1950? A. Mishel Wine and Liquor Company?

Q. Mishel Wine and Liquor. Give me the name. I don't recall it at the moment. What was the name of the liquor company? A. Mishel Wine and Liquor Corporation.

Q. Corporation. Did you obtain loans in 1950 in the name of Mishel Wine and Liquor Corporation? A. I don't remember if I did or didn't.

Q. Didn't you receive two $5000 loans? A. I did receive some loans, but I don't remember (303) when.

Q. Do you recall whether you received two $5000 loans from Pennsylvania Exchange Bank when neither you nor your wife or the corporation owned the Mishel Wine and Liquor Corporation? A. We owned the corporation.

Q. You owned the corporation but you didn't own the liquor store? A. We had sold the store.

Q. You had sold the store. And when you went down to Miller you obtained a loan, didn't you? A. He knew the store was sold.

Q. In other words, you told him that the store was sold, right, and you wanted to borrow money for a store that was sold? A. I didn't borrow it for the store.

Q. What did you do it for? A. I borrowed it for the corporation.

Q. Is it your testimony, Mr. Mishel, that when you were making that loan it was for the corporation, after having advised Mr. Miller that the corporation didn't own anything? A. He knew it was sold months and months before.

Q. Would you answer the question?

(304) Mr. Rosenblum: May the stenographer read it?

(Question read.)

A. I don't remember when the loan was made, but at the time the store was in the process of being sold or had

Q

been sold and the license was being approved, and I don't recall exactly the circumstances of that loan.

Q. Isn't that the excuse you gave him later when he brought you down and told you that the credit reports show that Mishel Wine and Liquor Corporation didn't own the store anymore? A. No.

Q. It wasn't at that time? A. No, sir.

Q. Isn't that the time when you said to him, "I will give you collateral"? A. No, sir.

Q. Isn't it a fact that the two loans I refer to were made on March 2, 1950, and March 9, 1950? A. I don't know when they were made.

Q. Wasn't it during that period of time? A. I don't remember exactly when they were made.

Q. Isn't it a fact that you did say to Mr. Miller that you were of the opinion that it would take a month until the store passed through the statement of authority and therefore, you thought you did own the store? (305) A. I don't remember.

Q. You won't deny it, will you? A. I can't remember.

Q. You have no recollection? A. That is right.

Q. Isn't that the time when you said, "I will give you collateral"? A. I don't remember telling him I will give him collateral.

Q. Isn't it a fact that you gave him collateral? A. When?

Q. May, 1950. A. May? When this was in March?

Q. Yes. A. What happened to April?

Q. Do you want me to answer it? I don't think I should, but I will. Maybe it will come out in my questions.

Didn't you learn that a man went down to the District Attorney's office, a man went down to the credit department, a man by the name of Paige, Joe Paige, was called down to the 38th Street Branch of the Pennsylvania Exchange Bank in connection with the loan that he had obtained, the funds which went to you, and at that time

didn't you learn that he had told Mr. Brown (306) of that branch that you didn't own the liquor store? A. No.

Q. Do you know whether or not the credit reports as they came through showed that you didn't own the liquor store? A. No, I don't know nothing about that.

Q. Do you know whether or not Mr. Paige suggested that they take a look at the bonds and securities you put up as collateral? A. In March?

Q. May 2, 1950. A. What securities?

Q. Alpren, Sadie and Frank Alpren. A. That wasn't brought out that way.

Q. That wasn't brought— A. No.

Q. Don't you remember you submitted a hypothecation agreement which I think was prepared by Mr. Samuel Bierman, a lawyer? A. As far as Sadie and Frank Alpren stock, that didn't come out that way. And the loans that were past due or due were other people's paper besides my own paper in May were uncollateralized for months and months prior to that, and the stock that was put up (307) was the name Alpren stock, but the bank isn't the one that brought out that the Alpren stock was hot.

Q. That is what you understand? A. Well, I know.

Q. You knew it was hot, didn't you? A. What?

Q. You knew the stock was hot? A. So did a lot of other people know it was hot.

Q. You knew it was? A. So did Mr. Miller know it was hot.

Q. You told him that? A. I certainly did, and he took the cream off the stock and gave me——

Q. Do you know whether or not, then, in May he sent out Mr. Reedy to the District Attorney, Mr. McAvinue and filed the complaint? A. The complaint was filed before that.

Q. That is what you say. A. That is what I know. The complaint was filed by somebody in the name of Pollack, Abe Pollack, a lawyer.

Q. Do you know whether or not the fact is that in May,

1950, Mr. Miller sent Mr. Reedy down to the District Attorney's office to file the complaint? A. I don't know what happened in 1950.

(308) Q. Let me ask you this: In connection with those two $5000 loans which you made, did you plead guilty? A. No.

Q. Did you plead guilty to the 24 counts or did you plead guilty to whatever counts covered the Alpren stock which you uttered? A. I believe that is what I pleaded guilty to.

Q. At that time did that plea cover the indictment in which the two $5000 loans— A. I don't think so.

Q. Are you sure? A. I think that was put aside.

Q. Was it dismissed? A. I don't know. You have to ask my lawyer; he could tell you better than me.

Q. Didn't you know at that time, didn't you hear whether you were entering a plea to the Alpren, to the— I will come back to that in a moment.

Do you recall pleading guilty to the entire 24 counts covering the Alpren stolen or hot securities? A. I recall pleading guilty; I don't know exactly what counts they were.

Q. Do you recall whether you pleaded guilty to all 24 counts? (308a) A. I don't recall exactly.

Q. I will get that information in a few moments. Now, let us go back for a moment. Do you recall your lawyer at that time was Samuel Bierman of 475 Fifth Avenue? A. I believe that was my lawyer.

(309) Q. Do you recall whether the Assistant District Attorney was John McAvinue? A. He was one of the assistants on the case.

Q. You mean he was working for somebody? A. There were other assistants on that case.

Q. What is his name? A. I don't know.

Q. Who was in charge of that case? A. Mr. Hogan, I presume.

Q. He handled it personally? A. No, I don't know who handled it personally. Mr. McAvinue had most to say in that case.

Q. Most to say? A. That's right.

Q. And he had an assistant, another assistant, who worked with him; is that right? A. Two assistants, I think, one a Mr. Newman, and I don't recall the other one.

Q. Newman? A. Yes.

Q. Leonard Newman? A. I don't know his first name.

Q. You say you don't recall and you don't know whether you pleaded guilty to each of the 24 counts? (310) A. I don't know. I know I pleaded guilty. I know I was sentenced, but the exact counts I pleaded to I don't know.

Q. See if this refreshes your recollection. Do you recall whether or not your plea was entered on November 17, 1952? A. It was somewheres around that date.

Q. Do you recall whether John A. Mullen was judge? A. Yes, he was the judge.

Q. Do you recall that the man with Mr. McAvinue was Charles J. McDonough? A. I don't know.

Q. Do you remember whether a Mr. Milton Branch appeared for you? A. Who?

Q. Mr. Milton Branch. A. I don't know anybody by the name Milton Branch.

Q. You say you don't recall whether Mr. Branch— A. I don't know anybody by the name Milton Branch.

Q. Do you know whether he was in court for the purpose I have referred to representing Mr. Bierman, your attorney? (311) A. I don't know anybody by the name of Milton Branch.

Q. Do you recall whether this happened:

"The Court: Yes, gentlemen, come up now."

Then consultations.

"The Court: Arraign the defendant.

"The Clerk: Irving Mishel to the bar."

Do you recall?

A. I don't recall that. That is about four years ago.

Q. The defendant is now duly arraigned at the bar and conferred with counsel.

"Mr. Branch: Ready, your Honor."

A. I don't know any Mr. Branch.

Q. "The Court: Make your application.

"Mr. Branch: The defendant wishes to withdraw his plea of not guilty on Indictment 613/1951 and 295/1951, and he wishes to plead guilty to each of the counts in Indictment 613/1951."

Do you recall that there were two indictments at that time? A. I don't recall the incident at all. I don't even know Mr. Branch. I don't know no Mr. Branch.

Q. Do you recall whether what I said occurred? (312) A. I don't recall ever Mr. Branch, and I don't know nobody by the name Mr. Branch.

Q. Would you say what I just read did not occur? A. I don't know. It must have occurred, but I don't know Mr. Branch.

Q. Do you recall whether or not an indictment bearing No. 295/1951, charging grand larceny in two counts, was returned against you, and the first count charged that on March 2, 1950, Mishel stole $5000 from the Pennsylvania Exchange Bank through false representations, to wit, that the Mishel Wine & Liquor Corporation was the owner of a retail liquor store at 2960 Third Avenue, and so forth, which representations were untrue? A. I believe that indictment you are talking about and this other indictment that I pleaded to was a superseding indictment to that indictment. The first one you are talking about was dismissed or whitewashed or whatever they called it, and a superseding indictment was handed up.

Q. Will you tell us whether or not a second count in the

indictment I just referred to charged that on March 2, 1950, Mishel stole $5000 from the Pennsylvania Exchange Bank through false representations, to wit, (313) that the Mishel Wine & Liquor Corporation was the owner of a retail liquor store at 2960 Third Avenue, which representation was untrue.

Do you recall? A. No, I don't recall that at all.

Q. Do you recall that there was an indictment charging you with those crimes? A. I don't recall. You see, there were so many charges made at the time that I don't recall any of them.

Q. Would you say that this indictment was not returned against you? A. I don't know.

Q. Would you say that you don't remember whether it was returned against you? A. I don't remember a lot of things because those things happened so long ago I just don't remember them.

Q. Mr. Mishel, you have been able to remember a lot of things that you say happened the last six or seven years, isn't that so?

Mr. Hallinan: I am going to object to this.

The Court: Sustained.

Mr. Hallinan: I think that at this point the (314) inquiry has been extended far enough. I think proper proof at this point would take the form of a certified copy of conviction, which is very easily obtainable and would reflect exactly what the man pleaded to.

The Court: Yes. I will let him go on a little bit longer.

By Mr. Rosenblum:

Q. Mr. Mishel, do you recall that the indictment I just referred to, that I questioned you about, with the two

counts, was 295/1951, and now I will read to you from the record and say whether this did or did not occur.

The Court: I don't think it is right for you to say you are reading from a record. There is no proof of the authenticity of that document, whether the stenographer got the name right or did not. I do not know.

Mr. Rosenblum: I will withdraw that.

Q. Tell us whether or not this occurred, after I read:

"The Court: Make your application.

"Mr. Branch: The defendant wishes to withdraw his plea of not guilty"——

A. I don't know Mr. Branch.

(315) Q. Let me finish my question, please.

"Mr. Branch: The defendant wishes to withdraw his plea of not guilty on Indictment 613/1951 and 295/1951 and wishes to plead guilty to each of the counts in Indictment 613/1951."

Would you say whether or not that occurred? A. I don't know Mr. Branch, who you are talking about there. I don't know him.

Q. Would you say that this did not occur? A. I don't know Mr. Branch who you are talking about there.

Q. If I put the same question to you and say to you, was a statement made in your presence on November 17, 1952, as follows——

Mr. Hallinan: No statements. The fact that it is in his presence works no magic formula either. It is hearsay, what somebody else said at the particular time.

The Court: I will tell the jury now that if Mr. Rosenblum incorporates the telephone book or any-

thing else in this question that does not prove that anything happened. The only thing that proves anything happened is what the witness says from the witness stand. He can ask him, was this statement made, (316) were 59 statements made, and all we are going to get out of it is what the witness recalls, and if he does not recall any statement, then Mr. Rosenblum's statement is no proof whatever that any such statement was ever made.

Go ahead.

Mr. Rosenblum: I put the question and I see what my answers are

Q. Will you tell us whether or not on—I think you had told us on November 17, 1953—you entered a plea of guilty in the Court of General Sessions before Judge Mullen? A. I did.

Q. Now, do you recall whether the following was said by anyone in your presence:

"The defendant wishes to withdraw his plea of not guilty on Indictment 613/1951 and 295/1951 and he wishes to plead guilty to each of the counts in Indictment 613/1951."

Do you remember whether that was said? A. I don't recall any of that.

Q. Would you say that it was not said? A. I don't recall any of it.

Q. You cannot say it either way? (317) A. I just don't recall it.

Q. But do you recall whether you pleaded guilty to the indictment 613/1951, which had 24 counts? A. What were the 24 counts? What were they pertaining to?

Q. All 24 counts concerned themselves with the stock. A. The stock I remember pleading guilty. To what I pleaded guilty, I don't recall. I recall pleading guilty to the stock, and that is all I recall pleading guilty to.

Q. Can you tell us whether or not you recall that on that occasion Mr. McAvinue said: "The people recommend the acceptance of a plea of guilty to each count of Indictment 613/1951 to cover as well 295/1951"? A. I don't remember any of that.

Q. See if you can recall this and tell us whether you do or you don't or whether it did or didn't happen.

Do you recall whether the clerk at that time said: "Do you now withdraw your plea of not guilty heretofore interposed and do you now plead guilty to the crime of forgery in the first degree in the first count of the indictment?

(318) "The Defendant: Yes." A. I don't recall that at all.

Q. Do you recall whether or not——

The Court: I think we have gone about far enough.

Mr. Rosenblum: I have a covering question for all the rest of the 23.

Q. Do you recall whether or not the same question was put with regard to the other 23 counts separately, and in each instance you made an answer? A. I don't recall any of it.

Q. Do you recall whether you pleaded guilty to the crime of forgery? A. All I do recall is I pleaded guilty to the Alpren stock, and that's all.

Q. You pleaded guilty also in connection with the Alpren stock to the crime of grand larceny in the first degree, do you recall? A. I don't recall.

Q. Do you recall whether you also pleaded guilty to criminally buying and receiving stolen property as a felony, the 23rd count? A. I just don't recall. All I recall is pleading guilty to the Alpren transaction.

(319) Q. The last one. Do you recall whether you

pleaded guilty to criminally concealing and withholding stolen and wrongfully acquired property as a felony? A. I don't recall.

Q. Would you say you did not plead guilty to all those items? A. I told you I don't recall anything other than the Alpren transaction.

Q. And thereafter did Judge Mullen impose a sentence of 10 to 20 years? A. That I recall very well.

Q. Do you recall whether the Judge at that time made this statement——

Mr. Hallinan: No.

Mr. Rosenblum: I left it out, Judge. It is incomplete.

Mr. Hallinan: I think it is irrelevant.

Mr. Rosenblum: May I show it to your Honor? It deals with something that has been testified to. That is why I want to bring it to his attention.

Mr. Hallinan: He is not going to contradict him with statements made by other people.

(320) The Court: What is it?

Mr. Rosenblum: Just the top (handing document to Court).

The Court: That does not help at all, as I see it. I will come back to the thing that Mr. Hallinan asked for ten minutes ago. If you want to get down to the particularity as to what he pleaded to, you can refresh his recollection with a certificate of conviction, if you want to, but beyond that I am not going to waste any more time on what happened before Judge Mullen.

Mr. Rosenblum: In other words, if I get the certificate I can get the witness back and question him?

The Court: I am not going to bring him back for that. I assumed you had it here. You have

everything else here. No, we won't bring him back for that. It is not that important. I think you have the substance of this thing. He pleaded guilty and got 10 to 20 years for the Alpren transaction. Anything else is cumulative and is not worth bringing the witness back for.

Mr. Rosenblum: That is not what the witness said. It also covered the two $5000 items.

(321) The Witness: I didn't say that.

The Court: What it covers and what it does not you can develop if you have the proper documents while he is still on the stand.

By Mr. Rosenblum:

Q. You say that on the occasion when you met Mr. Miller after you were released you— A. After which release?

Q. Of October 6, 1950. A. Thank you.

Q. That you had a conversation with him; is that right? A. That's right.

Q. That you were then on friendly terms? A. That's right.

Q. For how long a time after that did you continue on friendly terms? A. I don't recall exactly.

Q. Approximately? A. I don't recall exactly.

Q. Can you give us any idea as to whether the time was a short time or a long time? A. I just don't recall.

Q. Did you see him again after that? (322) A. I told you I saw him after that.

Q. And when did you see him after October—after whatever date was—I will withdraw that.

You said there was a time that you cannot fix which was after October 6, 1950, that you saw Mr. Miller and you cannot give us the date— A. I just don't remember. I remember seeing him, but when, I don't remember.

Q. Can you tell us whether at this time, when you saw him, and you say it was after October 6, 1950, whether you had the safe deposit box that you said was owned by you and your two partners, Gallagher and Miller? A. I just don't remember, as I told you on Friday, whether it was before or whether it was after. I just don't recall.

(323) Q. Whether what was before? A. The safe deposit box, when this incident happened. You asked me that seventeen times the other day.

Q. Go ahead. A. I just don't recall.

Q. You don't recall when you had the safe deposit box? A. When we went in there. You asked me just then when we went in there.

Q. I am asking whether or not at the time, whatever that time was when you say you spoke with Miller, did you at that time still have the safe deposit box in the name of Robert Benson?

Mr. Hallinan: I will object, your Honor. May we approach the bench just briefly.

The Court: Sure.

(The following occurred at the bench out of the hearing of the jury:)

Mr. Hallinan: I will object to any further inquiry about the safe deposit box on two grounds: First, the matter was very thoroughly explored on Friday over my objection, first my objection which I said I did not press, and second, the other objection which I said I was going to press vigorously.

(324) The Court: Which was that?

Mr. Hallinan: When the matter had gone on for sometime, I got up again and objected. The second ground is that I have examined the record very carefully over the week end and I did not explore this particular territory with this witness.

I think that when Mr. Rosenblum got in this

area that he had adopted the witness as his own and what is taking place now is that he is setting up a witness who is his own for the purpose of setting up his own straw man for the purpose of knocking him down, I anticipate, through the witness himself and through other witnesses.

I think, in my view of the law, that Mr. Rosenblum is stuck with this particular testimony at this particular time, and I renew my objection as to any further inquiry on these two points.

Mr. Rosenblum: I think it is proper cross-examination. He said he had dealings with this man, and I was exploring the dealings and I brought things to his attention. Let us assume if he had remembered he had committed another crime, that makes him my witness. I don't think I am limited solely and only to those (325) particular items which occur. In particular, if the questions I ask come out as a result of my cross-examination on those items, I don't think he becomes my witness. If he is, he would be a hostile witness anyway. I think that is obvious.

The Court: Aren't we getting into two different things: Your right to cross-examine and your right to produce independent proof? Just because I have let Mr. Rosenblum cross-examine on this subject is no suggestion I am going to let him put in independent proof that there was no safe deposit box. That is what Hallinan is in a sense giving you notice of now. When that proof is tendered, he is going to object and I think with some basis. In other words, you cannot develop an unrelated transaction with the defendant and then produce proof that his testimony on that was false.

Mr. Rosenblum: I don't think it is unrelated, Judge. My thinking is this: Here a man is telling

about his association and relations with Gallagher and with Miller. He comes up to a certain point. I cross-examine him. It develops there are other relations that he said existed.

The Court: Can you produce independent proof (326) on that $5000 bond that Mr. Halinan never went into at all? I don't think so.

Mr. Rosenblum: $5000 bond?

The Court: It seems to me you have gone off into those transactions which at the moment seem unrelated to the one we are trying here, whether Mr. Miller made a false statement to the Treasury Department. I do not see what the bond has to do with it and I do not think I will take any proof on it except what you have developed, and the same thing about the safe deposit box. I do not see how it ties in. In other words, I am not cutting you off at the moment as far as cross is concerned, but I am telling you that I do not think I am going to take any independent proof on it.

Mr. Rosenblum: I think it is admissible, Judge. Independent proof will be admissible. Just because a witness brings something out on cross-examination, since it is related to the matter we are discussing and examining him about, I think that if anything which he says is untrue and I can prove it, it is admissible.

The Court: I have let you go on. I think it is proper for you to develop this man's background of relations with the defendant as far as you want to, but I do not think we are going to try out the truth of all of the (327) statements he makes as to that background. We haven't got time. I want to try the question whether Mr. Miller made a false statement and I don't want to get off on those issues. So I think you ought to keep it in mind. I am not

stopping you now as far as cross is concerned. If Mr. Hallinan is objecting, I will overrule the objection and I will let you go into almost any question of the relationship with the defendant on cross, but I won't take independent proof except on matters material to the issue on trial here.

Mr. Rosenblum: That is right, if it is material. That is what I say.

The Court: I do not think it is. I do not think that the safe deposit box or those other bonds are.

Mr. Rosenblum: I think, as Mr. Hallinan has stated—it is in the record—that the dealings, as he claims, between Mr. Miller and Mr. Mishel are the basis for the falsity of the statements which he claims were in those letters which are the subject matter of the indictment. I think if that is so, that it then follows that anything which is relevant to that should be——

The Court: In other words, if Mr. Hallinan had proved these incidents as part of his chain of proof that Miller knew the kind of man Mishel was and the kind (328) of business he brought to the bank, I am not sure he could have gotten it in, but assuming he could have, then I would say you could both cross-examine and produce independent proof on it, but he has not tried to prove his case that way.

Mr. Rosenblum: He showed that Mr. Mishel had a conversation with Mr. Gallagher and Mr. Miller right at the very beginning in which he claimed that at that time he said, "Do anything you want, legal or illegal."

So that was open and completely on direct examination and not on cross. I did not bring that out. He says that is what was said on direct examination. Then he goes in to show a course of conduct in support of that. I think it all becomes relevant since he opened that.

The Court: I do not think he showed any general course of conduct. He stuck right to this transaction.

Mr. Rosenblum: Once the man says they had this relationship, I don't think that you say it is just to be limited to the one thing they want to bring out and nothing else.

The Court: I do not think the defendant said he had this relationship. He told us that a conversation took place, in other words—I do not know whether this was his introduction to Miller or not.

(329) Mr. Rosenblum: Yes, that is what he said. He said at the time he was in with Gallagher and Miller walked in and at the time Gallagher said, "You can do anything with him that you want. He comes from good people."

The Court: I think there is a limit to how many bridges we can cross before we get to them, but I did not want you to get into an impartial position.

Mr. Rosenblum: Around the Pennsylvania Exchange Bank, in light of the setting they set, it shows the relationship.

The Court: You can cross-examine on it, but I do not think we have a basis for independent proof of these other transactions.

(Proceedings were resumed within the hearing of the jury as follows:)

Mr. Rosenblum: Will you read that last question, please?

(Last question read.)

A. I don't remember.

Q. Do you recall when you opened the box in the name of Robert Benson? A. Shortly after—maybe three or six months after I became a depositor in there.

(330) Q. That would make it, then, three or six months after— A. A year; I don't know.

Q. Three months, six months, or maybe a year after '47; is that right? A. Three months, six months, maybe a year.

Q. Did you retain that box until the day that you told us about when you went down and you said you found the box had been removed and something else had been put in its place? A. The box was there until that time.

Q. Do you recall whether a detective from the District Attorney's office was up with you at the time you went up and say you found that the safe deposit box had been removed?

Mr. Hallinan: Your Honor, I am aware of your recent ruling, but this was covered exhaustively yesterday.

Mr. Rosenblum: I did not go into this.

Mr. Hallinan: Yes, you did. We are going to make no progress at all if these matters are going to be covered three or four times.

The Court: I think I will sustain the objection. I do not think you asked him specifically about the (331) District Attorney's office, but you asked him who was with him, and you asked him about the Sheriff's office and I think we have gone over it enough.

Mr. Rosenblum: There were two incidents he talked about—on one occasion when the Sheriff was there for his own box.

The Court: Read this question and let him answer it, if he can do it.

(Question read.)

A. I don't remember who was with us.

Q. At the time that you went up to the bank, were you

still on friendly relations with Mr. Miller? A. I don't remember.

Q. You have no recollection at all? A. (Witness shakes head.) Because I don't know when it was.

(332) Q. You testified with reference to a time when you say you turned over the Chernoff bonds to Mr. Miller and he put it in his desk. Do you recall that? A. Yes, I recall that.

Q. At that time did you have the safe deposit box? A. I don't recall whether I did or I didn't.

Q. You don't recall that? A. When was this? In what year?

Q. Well, you tell us when you gave the bonds to Mr. Miller when you say he put them in his desk. A. Oh, in 1949. I don't recall whether that incident was before or after, as far as the safe deposit box.

Q. You don't recall whether the incident when you found the box was gone was before or after? A. I don't remember, that is why.

Q. Wasn't it after you had already made some statements to Mr. McAvinue? A. When was that It must have been after then.

Q. Didn't you talk to McAvinue after the Chernoff incident? (333) A. Yes, then it was after.

Q. So it was after? A. Yes.

Q. So the box was there at the time you claim? A. In 1949 it was there.

Q. At the time when you brought the bonds, as you say, to Mr. Miller, you had the box? A. That is right.

Q. Is that right? A. That is right.

Q. You say he had access to it? A. That is right.

Q. Can you tell us one single thing that you saw Miller put into that box? A. Money.

Q. Did you see him put it in? A. Yes.

Q. You were there with him? A. Yes.

Q. Did he have access to the box or Gallagher? A. Either one of them.

Q. Which was it? A. Either, either.

Q. Tell us when that occurred. Give us a single (334) occasion when you say that occurred. A. When we had the box.

Q. Tell us the time, please, and the circumstances, anything that brings it to your mind. A. Cashing of some money, burnt money.

Q. Burnt money? A. That is right.

Q. What is burnt money? A. Burnt money that came out of the safe that was burned, the edges.

Q. You say the money that came out was regular legal tender? A. Tender that was stolen out of a safe that was burned, scored, and they cashed it.

Q. When was that? A. About the same time.

Q. When? Give me a single date. A. The same time as these Chernoff bonds, in that area of time.

Q. Can you give me the name of a single person who was present, outside of yourself, who might remember some of these things that you say occurred? A. I could tell you whose bonds that came out——

(335) Q. Answer the question. A. No, I will tell you what came out of there besides money.

Q. Let me ask the question. You will have every opportunity. I ask you if you can give me, give the Court and the jury the name of a single person who was there outside of yourself and Miller or Gallagher when you say some money was put in or taken out of that box. A. I don't know of anybody I could say offhand, but I could tell you the incidents what went into that box.

Mr. Rosenblum: May that be stricken out as not responsive, your Honor?

The Court: No. I will let it stand.

Q. Now you tell us the date when you say these incidents occurred. A. Let me know when certain bonds were stolen and I will tell the exact date.

Q. Can you say when the bonds were solen? Don't you know when the bonds were stolen? A. These were negotiable bonds.

Q. Can you tell me whether or not during the entire time that you had the box with Miller and/or (336) Gallagher, which one had the other key, whether you were friends with them until you found that the box was gone? A. I believe we were friendly all that time.

Q. Can you give us the date at all? A. I just can't give you the date, Mr. Rosenblum.

Q. You said on your direct examination that there were some stiff accounts that you referred to; right? A. Yes, sir.

Q. And you said that you paid $150 a month. For what?

Mr. Hallinan: I object to this unless Mr. Rosenblum can state to the Court that he has something new. I think we have been over this exhaustively.

Mr. Rosenblum: No; I haven't.

The Court: I will allow the question.

Mr. Rosenblum: I didn't touch on this fact at all. I just went into some names of accounts. I never went into anything with reference to paymenfs.

Mr. Hallinan: I will show you about the 25 references in the record that reflect this.

The Court: We are going to take our mid- (337) morning recess anyhow, and I will excuse the jury and you can show me anything you want.

Don't discuss the case.

(Jury retired.)

Mr. Hallinan: Stiff accounts was covered: Pages 215 to 216, 239 to 241, 241 to 244, 245 to 251.

The Court: 215 and 216. And what is the other?

Mr. Hallinan: 239 to 241. 241 to 244.

The Court: Just a minute now.

Mr. Hallinan: Oh, I am sorry.

The Court: What is the next one after 241?

Mr. Hallinan: 245 to 251.

The Court: Yes.

Mr. Hallinan: That is all.

The Court: I will let you go ahead for a while anyhow. Get back here by five minutes to twelve.

(Short recess.)

Mr. Rosenblum: What was the last question?

(Question read.)

Q. Now, can you tell us when the first $150 was paid and for what account? A. I don't remember the name of which account (338) came first, but I remember that $150 was paid, and many times thereafter it was paid by me or by some employee of mine who would bring it up.

Q. Will you answer the question, please, if you can. When did you make the first payment? A. When the first account was opened.

Q. When was that? A. I don't recall the exact time.

Q. Give us the approximate date. A. Sometime '47, maybe 1948, or maybe the beginning of 1949, somewheres in there.

Q. That is three years you have referred to. Do you say that you don't know whether it was 1947, 1948 or 1949? A. That is right.

Q. You remember all the other details that you testified about but you don't remember when you made the first payment?

Mr. Hallinan: I object to this.

The Court: Sustained.

Mr. Hallinan: It has happened so much I would ask the Court to ask Mr. Rosenblum please not to

do it any more. I hate to stand up each time it happens, but it has happened sufficiently so far that I anticipate (339) it will happen in the future. There is no necessity to rephrase in this manner what the witness has said.

The Court: No. Go ahead. I sustain the objection to this question.

Mr. Rosenblum: Exception.

Q. Tell me, when was any other occasion that you paid or anyone in your behalf paid Miller $150 for operating one of the accounts you referred to as the stiff accounts? Can you give any date at any time? A. I sent Sam Siegel up with money, I don't know exactly the date; I sent Norton Schnabel up with money; I sent Mickey Rosenberg with money. I don't know dates. They weren't important to me.

Q. What did you tell them to say to Mr. Miller, Schnabel, Rosenberg, Siegel, at the time they delivered that money for you? A. Give this money to Miller and take these deposits and make them at the window.

Mr. Rosenblum: Give me that answer again.
(Answer read.)

Q. You just told them to give money to Miller? A. That is right.

Q. Open money? (340) A. I took it, put it in an envelope, sealed it, sometimes opened, and I said, "Give it to him."

Q. Which was it? Sealed—— A. Both ways. Sometimes sealed, sometimes open. Any way it happened to come out.

Q. You say that you gave Schnabel money to deliver to Miller? A. That is right, and Siegel.

Q. Either sealed and sometimes unsealed? A. I gave

it to Schnabel, I gave it to Siegel, I gave it to Mickey Rosenberg.

Q. Did you tell them to say anything at the time? A. No, just give it to Miller, and if he isn't there bring it back, or sometimes I would say to leave it for him, leave the sealed envelope for him.

Q. Can you give us any date or any time when Siegel made such deliveries? A. Yes, when he was in my employ.

Q. Can you give us anything better than— A. I don't know——

Q. —that answer, when he was in your employ? A. I just don't know the exact years that he was in my employ, but in that time in my employ he did (341) it.

Q. Can you tell us what particular accounts and how much you paid for a particular account? A. I think the name of the account was Sam Marco.

Q. Was there any other account for which you paid? A. John Case.

Q. How much did you pay for John Case? A. $150 a month.

Q. For how many months? A. A couple of months. It didn't run——

Q. How many? A. It didn't run long. A couple of months, a couple of months, maybe two, maybe three, maybe one month.

Q. How much in all do you say you paid Miller for the particular purpose your have just testified about? A. How much in dollars and cents?

Q. Yes. A. I don't know. Hard to say.

Q. Did you pay it each month? A. Yes, the first of the month, third of the (342) month; sometimes before the month went out we straightened out.

Q. Can you tell us, if you can, any recollection when you yourself paid Miller, money to Miller? A. On many occasions.

Q. Can you give us any occasions? A. I just don't remember the time. I remember paying him, I remember sending Sam Siegel on many occasions. Sam was my man Friday, and he would go up there whenever I told him. He would deposit checks, make withdrawals, leave money, pick up bad checks, do everything for me.

Q. Can you give us any other information with reference to these payments that will help us fix the time and amounts you paid? A. Yes, when they were in my employ I used to send them up there.

Q. Would that be 1947, 1948, 1949? A. In those years. Maybe 1949, maybe 1948; I don't know what years it happened. I know it happened.

Q. All these things that you have testified about, do you say that this pursuant to the talk that was had with Gallagher when you say Miller walked in (343) there and Gallagher is supposed to have said to Miller, "Do anything you want," or "Do anything this man wants you to do, whether it is legal or illegal"? A. About that time. It happened after, it may have happened two years after.

Q. It was all pursuant to that talk? A. I don't know what you mean by that.

Q. You testified— A. I don't know what "pursuant" means.

Q. You testified that on an occasion came into the room? A. That is right.

Q. When you were with Gallagher, and when you say Gallagher said to Miller, "Do anything you want, anything this man wants you to do, whether it is legal or illegal"? Do you recall that? A. I recall that conversation.

Q. Do you say that those things which you have testified about that occurred, which you say, were illegal, were done pursuant to that talk? A. They were done before that, too.

Q. It was done before that? In other words, you say

that you didn't start doing anything which (344) was improper or illegal with Miller until—I withdraw that.

You say now that before the talk that you had with Gallagher you were doing things with Miller which were illegal? A. Before this talk with Gallagher?

Q. Yes. A. Yes, because this talk may have been six or eight months after I was a depositor in the bank.

Q. Tell us what you did before that talk with Miller. A. I had some burnt money that was taken out of the safe that was cashed there and I paid for the cashing of it.

Q. You mean you brought some burnt money in to Miller and you had it cashed; right? A. It was brought in, it was cashed. It was burnt money that came out of a safe that was in tiny pieces and they put the pieces together and they cashed the money for me and I paid for the cashing of it.

Q. Now, Mr. Mishel, you say before this talk with Gallagher on an occasion you brought— A. It was around the same time.

Q. —in burnt money, do you mean hot money? (345) A. The money came out of a safe. When it came out of the safe it was singed or scored——

Q. Seared? A. Seared.

Q. Or singed? A. Pieces, half-pieces, part of it you could just make out the two numbers; the ends were all burned to pieces.

Q. At that time you hadn't had the talk with Gallagher? A. I may have talked with Gallagher——

Q. At that time you hadn't had the talk with Gallagher and Miller? You know the conversation I am referring to. A. I don't recall whether it was before or whether it was after.

Q. You said a moment ago you knew it was before. A. The conversation with Miller and Gallagher I had—from the day I went into that bank I had an okay there to do

what I wanted. The fellow that took me in got me an okay.

Q. Please answer my question.

Mr. Rosenblum: May that be stricken out as not responsive?

(345a) The Witness: He asked me a question and I answered it.

Mr. Rosenblum: Let me ask the question, if I may respectfully say to your Honor.

The Court: What is the question?

(Question read.)

(346) The Court: Well, it was an argumentative question. I think I will let the answer stand.

Mr. Rosenblum: All right.

Q. When you say you talked about warm money and hot money, is that right? Do you recall you referred to it in your testimony? A. Yes, sir.

Q. By that you mean it is crooked money, stolen money, stolen bonds? A. Not bonds. I am not talking about bonds. I am talking about stolen cash that was taken out of a safe from a chemical company on the west side of Manhattan.

Q. What are you are saying to us is, and see if I am correct in stating it, that you are talking about the money, half of which had been seared from fire, burned, or pieces had been chopped into pieces as a result of something that occurred, is that right? A. That is right.

Q. You tell us now, take a dollar bill that has been burned around the edges or was chopped into four pieces, could you tell from looking at that that there was something wrong about that money? A. When you pay 10 per cent for it you know there (347) is something wrong for cashing it.

Mr. Rosenblum: May that be stricken out, your Honor.

The Court: No. I will let it stand.

Mr. Rosenblum: Exception.

May the question be read again? It was not responsive, your Honor.

(Question read.)

A. I don't know what to say on that.

Q. You mean to say if you went in to Mr. Miller or Mr. Littlefield or anybody or in any bank and you brought money which was in such condition— A. I brought $16,000——

Q. $16,000,000 dollars worth. A. —in that condition.

Q. Whatever the amount may be. Is there anything that you can see from looking at those bills which would show they came from an illegal source?

Mr. Hallinan: I object. He has answered the question. I object on the ground that it is repetitious.

The Court: I will overrule the objection.

Read the question.

(Question read.)

A. If he took it from me that way, burned all over, (348) he knows they didn't come out of a fire.

Q. You are telling us now what you believe he knew? A. I told him where it came from. In fact, I put the bonds in the bank, too, from the same place, the bonds were deposited in the bank.

Q. This was all before the talk that you and Gallagher and Miller had? A. Around the same time. It could be—

Q. You said before it was before. Do you want to change that?

Mr. Hallinan: No, I don't think he said it was before, your Honor.

The Court: I will sustain the objection as to form.

Q. Tell us of any transaction you had with Miller before the talk that you recited that you say took place at the time you walked into Gallagher's office, the details of which you gave us. Any transaction you had with Miller which was illegal. A. This money.

Q. This money, you are sure it was before that occasion? A. They cashed money sixteen times in there for (349) me. They used to cash thousand dollar bills.

Q. Are you sure this occasion was before? A. Remember when the thousand dollar bills were bad?

Q. Answer the question if you can. A. You are jumping on me.

Q. I am not jumping on you. A. Well, sit back there.

Q. I would like to stand wherever his Honor will permit me to stand. A. I can hear you good.

Mr. Rosenblum: I don't think, if your Honor please, that I have to take instructions from this witness.

The Court: I think you are quite right.

The Witness: I am sorry, sir.

The Court: I would like to know what question we have before us.

Q. Tell us of any illegal transaction you had with Miller. A. I told you three times already.

Q. Let me finish my question, please. (Continuing) Which occurred before the talk that you described on your direct examination and the one which took place at the time you walked into the office when you were with Gallagher? A. He used to cash thousand dollar bills for

me (350) at the time they were picking them up, the Treasury Department.

Q. Anything else? A. Offhand, I just don't recall. Maybe this bank money, it was around that sometime; it could have been before, it could have been after. But they used to cash thousand dollar bills like they were three dollar bills or five dollar bills.

Q. Is that the only thing that you say occurred? A. I just don't recall.

Q. The cashing of thousand dollar bills? A. I just don't recall. I recall this burned money, too.

Q. Do you say that occurred before? A. Some occurred before, some occurred after.

Q. Some occurred before and some occurred after. A. That is right.

Q. Anything else that occurred before? A. I just don't remember.

Q. And this you say was before Gallagher gave you an O. K. to Miller? A. That is right. I got the O. K. through Irving M. Luria, and the same day I went into the bank he gave me five thousand or four thousand dollars.

(351) Q. You mean he said your credit was good? Did he say to them you were a crook? A. I don't know what he said to them.

Q. You know Luria? A. You know him, too.

Q. Of course, I do. You know he is a lawyer, don't you? You say now, when you say you got an O. K., you are implying that Mr. Luria, in substance, said to Miller, "You can go ahead and do something which was crooked with this man"?

Mr. Hallinan: I object to the form of the question. The witness has just said that he did not know what Mr. Luria said to him.

Mr. Rosenblum: He said he got an O. K. from him.

Mr. Hallinan: The implications in this case are for the jury, and I am going to object time and time again, if I have to stand up, to Mr. Rosenblum incorporating in a question, the implication he wishes to get before the jury, which he can argue during his summation.

The Court: Well, with your general proposition I do not have any disagreement. But I think if you read that question back I will let it be answered.

Would you read the question?

(352) (Question read.)

The Court: I think you had better rephrase it as to form. There are several questions in there.

Q. At the same time you say Mr. Luria introduced you to Mr. Miller, tell us what he said. A. I don't know what he said.

Q. You weren't there when he introduced you? A. Yes, he said, "Hello, this is Irving Mishel. This is Jim Miller." "Hello." That is about the conversation.

Q. Did he say something about your becoming a depositor in the bank? A. Well, he said, "This is the fellow I was speaking to you about." But Irving Luria and me had been doing something at the time that was illegal.

Mr. Rosenblum: May that be stricken out?

The Court: Yes.

Mr. Rosenblum: I think I am entitled to a responsive answer. I don't think that we should be bound by any statement he wishes to make if it is not responsive to the question.

The Court: Well, I won't generalize, but I will strike that statement and tell the jury to disregard it.

(353) Q. Now, you tell us what else was said outside of what you say Mr. Luria said, "This is Mr. Mishel," and, "This is Mr. Miller." Tell us anything else that was said at that time. A. I don't remember exactly what was said.

Q. Now, you remember, Mr. Mishel, I started on the line of questioning with reference to different persons to whom you previously made statements. Do you remember on last Friday or on Thursday I touched on it? A. I remember.

Q. You remember I asked you if you made a statement to Mr. McAvinue? A. Yes.

Q. You said you made a confession to him? A. Yes.

Q. Then I got as far as you said you made a statement to Mr. Milenky? A. That is right.

Q. Did you say to Mr. McAvinue that you brought burnt money into the bank? A. I did.

Q. In that statement? You are sure of that? A. Positive.

(354) Q. You are positive? Was that on the first occasion you talked to Mr. McAvinue? A. I don't know what occasion. I spoke to him, to McAvinue, many times.

Q. Is it a fact that on some occasions you made statements which were different than the statement you made on other occasions?

Mr. Hallinan: I object to that, your Honor.

The Court: Yes. I sustain the objection as to form.

Mr. Rosenblum: Exception. Oh, as to form. I will change it.

The Court: You suggest that they were inconsistent.

Mr. Rosenblum: No.

Q. Was the first statement that you made to Mr. McAvinue one in which you put all of those details you have testified about, about these items that you have given the jury with reference to what you call were illegal transactions? A. The first statement I made to anybody was no statement. I refused in this instance with Mr. Sershan to give him a statement.

Q. You talked to Mr. Sershan? A. I refused to give him a statement.

(355) Q. Who was the first person to whom you did make a statement with reference to those things that you have testified about in this case? A. I don't remember who it was. I think it was Mr. McAvinue, maybe Mr. Milenky; I am not sure. I think it was Mr. McAvinue, though.

Q. How many statements did you make to Mr. McAvinue? A. Oh, quite a few.

Q. How many? A. I can't count. A few statements.

Q. Would you ten, seven? A. I don't know. A few.

Q. How many would you say? A. I don't know what you consider statements.

Q. Who made a record of what you said? Any time that Mr. McAvinue made notes of or any record of what you said, will you tell us on how many occasions that occurred? A. Quite a few.

Q. How many? A. I don't know. Quite a few.

Q. Would you say by that you mean twenty? A. I don't know. Quite a few. That is all I know.

Q. Would they be as many as ten? A. Quite a few, Mr. Rosenblum.

(356) Q. Would they be as many as thirty? A. Quite a few. I don't know how many.

Q. Over how long a period did you make statements to Mr. McAvinue? A. Over a period of about a year, maybe.

Q. During that period of a year you say you made quite a few statements, is that right? A. A few. I don't know whether quite a few. A few.

Q. Were they all exactly the same? A. Well, some of them were phrased differently. But the statement in substance was the same.

Q. The statement you say in substance was the same— A. Facts.

Q. (Continuing)—from the very first time to the very last time that you made a statement to McAvinue, is that right? Is that right? A. I may have added things to it.

Q. What is that? A. I may have added things to it.

Q. In other words, there were times when you didn't in the first instance make a complete statement, did you? (357) A. I made statements; I don't know how complete they were.

Q. How many times did you change statements?

Mr. Hallinan: Oh, no.

Mr. Rosenblum: All right. I will change the form.

Q. Did you ever change the statement? A. Not to fact. To place, maybe, but not to fact.

Q. Wasn't it your first contention that you had been in Florida at the time this Chernoff took place? A. What?

Q. Wasn't it your first statement—A. Chernoff?

Q. Yes. A. I don't remember any statement about Chernoff.

Q. Would you say that you didn't say at the time of the Chernoff transaction you were down in Florida? A. I don't remember anything about the Chernoff transaction.

Q. Would you say that you didn't make a statement about the Chernoff statement? A. I don't remember whether I did or I didn't.

Q. How many statements did you make to Mr. Milenky? A. Ask him. He is standing over there.

The Court: No.

(358) Mr. Rosenblum: I will be happy to, if he produces them; we will see how many there are by number.

A. I don't know. Many.

Q. How many? A. Many.

Mr. Hailinan: Oh, I am sorry. In response to Mr. Rosenblum I would be delighted to make available Mr. Mishel's statement, if he is serious. If that was a serious request I would be delighted to make it available.

Mr. Rosenblum: One statement or every statement?

Mr. Hallinan: Mr. Rosenblum, you directed a request to me to make available the statement made to Mr. Milenky and I——

Mr. Rosenblum: I talked about a whole series of statements.

The Court: If you are through with your conversation we will go on.

Mr. Hallinan: I am sorry, your Honor.

Q. When for the first time did you make a statement to Mr. Milenky? A. Now, let me think. About three years ago.

Q. Where was that? A. I believe it was in the Bronx County Jail, or in this building, I am not sure which. But it was (359) either here or there.

Q. Did you make a statement to Mr. Milenky in any other place other than the Bronx County Jail or here in this building? A. Yes, I may have made a statement to him in Westchester County Jail.

Q. Westchester County Jail. Now, where else? A. Federal House of Detention.

Q. How about the Tombs? A. Maybe in the Tombs; I am not sure.

Q. That is five places you mentioned. A. That is right.

Q. Where else? A. I don't remember.

Q. How about up at Sing Sing? Do you know whether he visited you there? A. No, never visited me there. The records of Sing Sing are available, so you can check.

Q. I am asking you a question. A. I answered it.

Q. How long were you in Sing Sing after the sentence was imposed?

Mr. Hallinan: I don't know what relevancy this has, your Honor.

Mr. Rosenblum: I want to fix places.

(359a) The Court: I will let him answer.

A. A couple of months.

(360) Q. Since then have you been in other jails? A. Yes.

Q. Like the Tombs or Westchester; is that right? A. That is right.

Q. Were there any other places than the five you mentioned where you made statements to Mr. Malinky? A. Not that I can remember. I don't know of any others.

Q. Were those statements recorded? A. Some of them were, some of them weren't. Some he took down by himself and some with other agents present; usually with other agents present.

Q. Any of them recorded by any stenographic device? A. I think a stenographer recorded about a 50-page statement I made to him at one time.

Q. When did you make that 50-page statement? A. About three years ago.

Q. Was that the first statement you made? A. That is about the first time I ever made a statement to him.

Q. Was that after the statement you made to Mr. McAvinue? (361) A. Oh yes.

*Irving Mishel—for Government—Cross*

Q. Do you recall about when you made the statement to Mr. McAvinue? A. No, I just can't remember when I made the statement to Mr. McAvinue.

Q. Do you recall whether or not you changed the statement, the first statement, you made to Mr. McAvinue in any way? A. I don't recall at all.

Q. You would have to see them to see whether you did or not? A. If I saw them maybe I could refresh my memory.

Q. Have you been shown any of those statements? A. Which statement are you talking about?

Q. Any statement you made, say, to Mr. McAvinue. A. Mr. McAvinue?

Q. Yes. A. I don't remember ever seeing any of them.

Q. How about Mr. Malinky? A. I have seen them from time to time.

Q. Have you seen them before you testified? A. I have.

Q. Can you tell us whether or not it is your (362) position, whether you will say to us now whether it is the fact—I will change the form.

Tell us, were the statements all the same? A. To fact, yes; to places, no. I was mistaken in one instance about one restaurant; it was another restaurant. I was mistaken about one day and it was another date. But fact, pretty accurate.

Q. Do you recall whether or not at any time in any statement you advised either Mr. McAvinue as to—did you ever tell Mr. McAvinue about the safe deposit box incident? A. I believe I did.

Q. Did you ever tell Mr. Malinky? A. I believe I did.

Q. And do you say now that the statement that you made in court here is the same as you made to McAvinue and Malinky? A. I don't remember what I made to McAvinue. I remember what I said to this man right here.

Q. When was it that you talked about the safe deposit box incident to Mr. Malinky? A. Oh, a couple of years ago.

Q. Was that after the statement three years ago or about the same time? (363) A. It was around the time of the first statement, maybe a couple of months later. I don't recall exactly when, but I did tell him about it.

Q. Now who else outside of Mr. McAvinue and Mr. Malinky did you make statements to? A. Assistant U. S. Attorney Hallinan, Costiglio, Brown, and Silverman, and Stratton.

Q. Who was that? A. A Mr. Stratton, Assistant U. S. Attorney Stratton.

Q. Stratton? A. Right.

Q. Who did you make a statement to first of the five people you have mentioned? A. There was another one, another U. S. Attorney. Mr. Klein.

Q. Klein? A. Klein.

Q. Which one did you talk to first? A. Mr. Klein.

Q. Is that Martin Klein? A. I think that is his first name.

Q. Short fellow with rather dark hair? A. I think that is his first name.

Q. About when did you make the statement to (364) Martin Klein? A. About the same time I made the statement to Mr. Malinky.

Q. That would be about what date? A. About three years ago, maybe two and a half years ago, about three years ago I would say. Then Mr. Klein I believe left the U. S. Attorney's office and Mr. Costiglio——

Q. He took over? A. Yes.

Q. He took the case, that is, Lawrence Costiglio? A. Yes, Lawrence Costiglio.

Q. And he took the case over after Martin Klein left the office? A. That is right.

Q. In connection with Martin Klein, how many state-

ments did you make to Mr. Martin Klein? A. I don't remember exactly.

Q. How many statements were recorded by a stenographer in Mr. Martin Klein's office? A. I don't remember that. You see, Mr. Martin Klein was—I remember him just vaguely; it was a short time that he spoke to me, maybe only once or twice, that is all.

(365) Q. Do you recall whether on each of those occasions you made a statement on the first one or two times? A. There was agents there, I recall that, agents of the FBI. I think there was a Mr. Robert Ives of the FBI, and Mr. Thomas Dugan of the FBI, besides Mr. Malinky.

Q. At that time when you say three agents were there— A. Well, Mr. Malinky I know, with these other agents, sometimes all three of them, but in most instances Mr. Malinky was there.

Q. When you talk about most instances, are you talking about making a statement on these various instances? A. They were speaking to me and questioning me about facts of things that happened.

Q. Was it recorded? A. I believe that it was recorded by them.

Q. By what? A. By them.

Q. By them in their own handwriting, they were making notes? A. I think—I don't know. Maybe you would (366) call them notes, but I know eventually that entire statement was recorded into one statement.

Q. How many statements that you made were recorded into the one statement? A. I don't know. I couldn't answer you. Quite a few.

Q. And was that taken by Mr. Klein? A. No, no. Mr. Klein had left the office by then, I think.

Q. Did Mr. Klein send for a stenographer and question you? A. I don't believe he did. I believe Mr. Costiglio did the questioning.

Q. Did Mr. Costiglio have a stenographer who recorded the questions that were put to you and the answers you made? A. I don't think it was that type of statement. It was more of a—not a question and answer statement. It was a——

Q. Running statement? A. A statement of fact. The statement that I gave. It wasn't a question and answer statement.

Q. In other words, you were told to give certain facts and you made the statement? (367) A. Made the statement.

Q. To whoever examined you, and in this case you say it was Mr. Costiglio, in the presence of a stenographer, is that right? A. That is right.

Q. And the stenographer recorded it? A. I believe quite a few stenographers reported it because that statement was about 50 pages.

Q. That is the statement you say Mr. Costiglio took? A. Mr. Malinky took it with Mr. Costiglio or Mr. Costiglio with Mr. Malinky. All I know is I gave them a statement.

Q. They each asked you questions? A. Well, they wanted to know certain affairs that had taken place, and my lawyer Mr. Cutler told me to tell the truth and clean up all these things and get it off your chest, so I did. I am sure Mr. Hallinan has that statement if you want it.

Q. Will you get it for me if I want it? A. If the Judge gives it to you; he is the boss.

Q. You said if I wanted it. This statement that you just referred to, was that the only statement (368) you made? A. I have made statements from time to time, yes.

Q. Was it any different? If you had one statement with everything in it what need was there for an additional statement?

Mr. Hallinan: I object to it. It is argumentative.
The Court: Yes. I sustain the objection.

Q. You say there were other statements, I think you said that. If I am wrong, tell me. A. The other statement was for the place that I said was Cavalier's; it may have been Morgan's Restaurant, not Cavalier's Restaurant. It was a mistake, not in fact but in place and in time. And when certain incidents refreshed my memory I says, "Yes, right, it wasn't there, it was there."

Q. Is it your position or do you say to us that what occurred was this, that you made one statement and that any later statement which you made only was for the purpose of making some corrections? A. No, no, I don't say that. I say I made several statements, I made a lot of statements. But——

(369) Q. For the same subject matter? A. Pertaining to bonds, to stolen bonds.

Q. For the same subject matter? A. No, it was quite a lot of robberies. It wasn't one matter of Mr. Chernoff; it was all different types of bonds that were stolen that we had passed and cashed, that I told him exactly what happened and made a clean breast of it.

Q. How many banks outside ~~of the~~ Pennsylvania Exchange Bank did you pass these bonds on?

Mr. Hallinan: I object, your Honor. We are getting back into that area.

Mr. Rosenbium: I am entitled to the number.

Mr. Hallinan: No, you are not. I think time and time again we have touched on this, and here we go again. May we come to the bench, your Honor?

The Court: Very well.

(The following proceedings took place at the bench, out of the hearing of the jury.)

Mr. Hallinan: On this question of how many other banks did you pass stolen bonds at, the next question is for the details. I don't think we should

get into this area at all. And this question is directly in that area.

(370) Mr. Rosenblum: I think the ends of justice require, since the impression could very well be left that everything he has referred to has gone through this bank in the way he has testified, and I think we are entitled to go into detail. I do think that since this is a matter of discretion we come to occasions when I respectfully suggest that the discretion should be exercised and avoid the possibility of leaving an impression which is not a fair one.

I am not asking this question because I don't have a basis for it, or that I am trying to put in a question something uncalled for, but I do think that to avoid the possibility of leaving the thought that everything he is testifying about went through the Pennsylvania Exchange Bank, we have a right to bring that out.

Mr. Hallinan: In direct response to that statement that the impression has been left, I did not develop any of those areas. The impression has been left, if it has been, through Mr. Rosenblum's own interrogation.

The Court: My own disposition is to let you ask this question. The one thing that I am sure I (371) don't want to get into is what happened at other banks, as to whether they were convicted or acquitted, or whether they got fired or not, or whether they were duped or whether they were not, because then you aren't going to this man's credibility. You are attempting to argue that because it was wrong in one case it was wrong on the basis of a pattern rather than just because he is a liar. You can go ahead on this-

Mr. Rosenblum: I don't want to abuse it. I don't want to say something which later you might feel I am saying in order to get a thought across. If you can give me some idea——

The Court: He has already told you all kinds of criminal acts, and this is whole business is now getting cumulative. He has confessed to you that I guess it was from 1945 on he got into one thing after another. As far as the fact that he was an out and out dishonest person during that period I think you have established it. I don't think he denies it. There is a question in my mind how much further to go before you get away from the material issue in this case. I will allow you to ask whether these were (372) all in this bank or whether there were other banks involved. I am not disposed to go much further. Is there any particular thing that you want to get into?

Mr. Rosenblum: I would like to establish the number of banks, names of the banks. I think I can go into the details of about the period of similarity——

Mr. Hallinan: I am afraid if your Honor allows him to go into these banks that I can, promptly, on redirect, have this witness explain because Mr. Rosenblum knows better than I do the impressions that are going to be left. And the impression is, without going into the details, he is going to get into as many details as he can that this man duped other banks, and we get into that the moment the first question is asked.

The Court: Then you are getting away from the fact that he was dishonest during that period. You are getting into the fact that somehow this was a

justification for this defendant because other banks got stuck.

Mr. Rosenblum: No.

The Court: I will let you ask how many (373) banks, but that is about the end I think.

(The following proceedings were held in the hearing of the jury.)

By Mr. Rosenblum:

Q. In connection with your dealings in stolen bonds and stolen securities and burnt money, those things that you have told us about, tell us through how many other banks you put through the same—you did the same thing as you described as being in the Pennsylvania Exchange Bank, by number. Don't give us the names, but give us the number of banks. A. I don't remember.

(374) Q. Would you say it was ten? I will suggest names to you. Think of it and see if you can give us a number.

Mr. Hallinan: Something occurred to me quickly. I don't want to mention this in front of the jury, your Honor.

The Court: Come on up.

(The following occurred at the bench not in the hearing of the jury:)

Mr. Hallinan: The last question included the very matter—if it is opened I am going into it whole hog. The last question was: In how many other banks did you do the same thing.

That question includes everything that was done at the Pennsylvania Exchange Bank.

Mr. Rosenblum: Would this be proper—does it come within the ruling: You say you had dealings

on certain things. With how many other banks did you have dealings on the same things?

Mr. Hallinan: That is inclusive, too.

The Court: I think I will keep out of this. I will sustain the objection and we won't even go into the number. I will let it stand as it is—"I don't remember." That is where we will let it stand without going (375) into particulars.

(Proceeding were resumed within the hearing of the jury as follows:)

By Mr. Rosenblum:

Q. When did you last see the statements that you described that you gave to the various assistants and agents that you testified about?

Mr. Hallinan: I am sorry, your Honor. May we have more specific questions than this?

Mr. Rosenblum: I will break it down.

Q. When did you last see the statements which you gave to Mr. Milenky? A. A couple of weeks ago.

Q. And how many statements did you see at that time? A. This master statement I was talking about.

Q. And will you tell us which one you are referring to? A. Master statement, I said.

Q. You haven't used the word "master" before.

Are you referring to the one made in front of Mr. Castiglia? A. The one I made with no questions and answers. I just gave a statement.

(376) Q. That is the one you say you made when? A. About three years ago.

Q. And then after that you—did you make additional statements? A. From time to time I made additional statements.

Q. Other than the corrections that you referred to as to subject matter, as to matter, facts? A. Yes, I made additional statements.

Q. And did you make such additional statements to Mr. Milenky? A. Yes, I did.

Q. And were these statements different than the statements which you previousiy made? A. No, they were added to it. There were some more facts to it.

Q. You did not change anything in the master statement at any time? A. No. The only thing that was changed in the master statement was the change of places——

Q. Corrections. A. They wouldn't even let me correct it. I wanted to correct it. They said, "You can't correct it." I wanted to correct it.

Q. Did you make any statements to an agent by (377) the name of Motto? A. Who?

Q. Motto.

The Court: Let me clarify one thing.

When you say they wouldn't let you correct it, you mean physically?

The Witness: Yes.

The Court: They let you give a supplementary statement?

The Witness: That's right. They wouldn't let me mar that original statement.

The Court: Go ahead.

Q. Did you make any statements——

Mr. Hallinan: This is the question about the statement to Carmine Motto——

Mr. Rosenblum: Yes, sir.

Mr. Hallinan: I will object to this on the grounds of irrelevancy.

The Court: I think this would be a good time to go to lunch. On rainy days if you get a fifteen

minute start on the other judges, the better chance of your getting your lunch without waiting. So we will recess now and resume at 2 o'clock. Don't discuss the case.

(Jury leaves courtroom.)

(378) Mr. Hallinan: Your Honor, with respect to the statement to Carmine Motto, I want to inform your Honor that Mr. Mishel has probably made statements to other investigative agencies that have nothing to do with this entire matter.

This Irving Mishel, as he said from the stand, was in criminal activity from 1945 up through the date when he was arrested. There are many investigative agencies interested in information that this man has and his records and so forth. I do not think that we should go off into an extended inquiry, unless Mr. Rosenblum wants to make a specific offer of proof of what he plans on developing by this. As far as I can see, it has nothing to do with this.

The Court: I do not quite get it. You are raising a question of credibility but you are not claiming privilege on behalf of any prosecutorial agency, in other words, the disclosure of these facts will not frustrate a prosecution?

Mr. Hallinan: In one case I can think of, it might very well, yes, your Honor.

The Court: Well——

Mr. Hallinan: Because Mr. Motto, I know, was interested in other bonds that have nothing to do with (379) this particular case.

The Court: Do you mind telling us, Mr. Rosenblum, where we are going on the Motto thing?

Mr. Rosenblum: You will recall it is in the memorandum that we submitted for the Court only.

*Colloquy of Counsel*

The Court: I do not think Mr. Hallinan has a copy.

Mr. Rosenblum: No. Your Honor suggested we give it to you only.

The Court: Here is a situation where we had probably better discuss it with Mr. Hallinan, with the Court's understanding this is not to be mentioned to the witness.

Mr. Perry: Your Honor, our information is that since 1953 Mr. Mishel has purported to have literally inexhaustible information about things, which, when investigated, at least in the instance we know of, were shown to have been false. In two instances, we called to your Honor's attention in the offer of proof, we have information where the leads—three—the leads he provided were shown to be false. We would like to ask him about it. Why do we do it? To show his bias and interest. He wants out of jail and I respectfully suggest to your Honor he wants out so badly he is willing (380) to put people in that should not be in. It is aside from this case. It is just on the information I put in the offer of proof.

The Court: Inasmuch as you may want to go into the other thing, this is covered by III of your offer of proof.

Mr. Perry: The name of the person we would prefer not to go into.

Mr. Hallinan: I cannot intelligeatly approach this.

Mr. Perry: May I say this——

Mr. Hallinan: We might save an awful lot of time. Would your Honor allow the Government then to go into the leads that Mr. Mishel has given

us and turned out accurately to rebut, which I think we would be entitled to?

Mr. Perry: I may be out of line in this suggestion, your Honor, but as to III (c), if we were to disclose the name of the person—I will have to check with Mr. Rosenblum, but my understanding is might it be understood he would not be questioned by any of the Government agents prior to the time we may call him as a witness?

The Court: Let us discuss this in an abstract (381) manner for a minute.

Mr. Perry: Yes.

The Court: You think if you cross-examine him you will say, "I was wrong in that situation"?

Mr. Perry: The information we have, Judge, is that that is so. I really cannot say with a hundred per cent accuracy that the result will be that, but the information we have is so. We never knew the name of Motto before we got this source of information, and apparently there is some validity to what we say because it is apparent Motto was conducting bond investigations as well. The person whose name is in III (c), your Honor, we would plan on calling him as a witness.

The Court: I do not see how you are going to call him.

Mr. Perry: On something else, perhaps.

The Court: That is a different problem. Whether you could produce independent evidence on that issue, I would doubt.

Mr. Perry: Except, Judge, when we were discussing this memo we provided to you and what is collateral and not collateral, questions showing interest of a witness is not collateral, I respectfully submit. We could produce other instances which

would show that he so anxious (382) to get out that he might be reckless about what he says as to others.

The Court: We have a problem here of the cumulative nature of this. He tells us from the stand that he is very interested.

Mr. Perry: We could pin-point, Judge. It is one thing to be interested abstractly, but if we could show you: Honor one case in which we might produce the witness—in two other cases we have information, but if we could show this man was so anxious to put other people in——

The Court: Why don't you try out that other case?

Mr. Perry: The one case we can produce the witness, Judge? I don't know.

The Court: Let us assume this is the way it turns out, that on cross-examination he maintains he was right, you think he was wrong, and therefore, you produce a witness to contradict him. Then Mr. Hallinan may be in a position to produce six witnesses to contradict your witness and the we will be here for sometime.

Mr. Perry: We can produce the one witness who will say he was wrong.

The Court: How do we know your witness is (383) telling the truth?

Mr. Perry: I have no personal knowledge who is telling the truth.

The Court: That is the problem. Then we put before the jury a controversy between two persons on a collateral issue of fact, and that is what I do not think I should do.

Mr. Perry: Judge, it would seem to me that in any instance where we can produce proof before your Honor that this witness is so interested in

getting himself out he puts other people in, it may be that evidence we put in might be subject to other claims that it is not true. I would respectfully think in a case like this the whole thing should go to the jury, then. We should not be denied the right to show that in at least one instance he perjured himself.

The Court: I am disposed not to take the independent proof on that, and I do not want you to be in a sense trapped by getting off into cross-examination that you cannot follow up with independent proof, if that is what you planned. I do not think I will take that independent proof because we would simply then have a controversy on an immaterial point. I mean the fact whether someone is guilty in another case is immaterial. (384) The whole build-up of credibility, of course, is immaterial, but each instance from which it is built up is not.

I think that this gets into the general criticism of this type of proof, and I do not think I will go beyond the cross-examination. I am disposed to let you cross-examine on it, if you want, but that will be as far as we will go on it.

Do you have anything further, Mr. Hallinan?

Mr. Hallinan: I cannot see anything further, because your Honor and Mr. Perry have knowledge that I do not have. I do not know what area they are going to inquire into so that I could make——

The Court: Well——

Mr. Hallinan: I can think, from the question, itself, of any objections I might make.

The Court: I think you ought to let Mr. Hallinan have the offer of proof in this regard, Mr. Perry. We are not going to get off into calling witnesses.

Mr. Perry: May I suggest this: We may pos-

sibly call that person as a witness—it is an open matter—as to something else. Now, Mr. Hallinan—I am not saying this to impute anything to him, but I think it is safest for all—we are interested in protecting (385) the defendant's rights—might it be understood that this witness would not then be questioned by the Government as to any matter—because we would call him as a witness as to some material aspect of the case—until after he is put on the stand?

Mr. Hallinan: This is strange in view of the fact that they called at home yesterday and asked if I had any objection to them examining Sam Siegel.

Mr. Perry: Except the witness wanted your permission first.

Mr. Hallinan: If that is their view, I will ask for an instruction from your Honor that they stay away from all my witnesses, which your Honor can not give.

Mr. Rosenblum: I do not think there is such a thing as a witness for the Government and a witness for the defendant. We called and the man said he would not talk to us before he got your permission. That is the reason we called you.

The Court: If the defendant does not want to make this offer of proof available to the Government, we will go ahead on a question by question basis, and as you see trouble, Mr. Hallinan, you call me and we won't try to resolve the question now, we will resolve (385a) it then, but I resolve it to the point of telling you my present disposition is not to take independent proof on any of these collateral acts of misconduct.

(Adjourned to 2 p. m.)

(386) AFTERNOON SESSION

(The following occurred in the courtroom, the jury not being present.)

Mr. Perry: Your Honor, before you call the jury, I am a little uncertain about your Honor's ruling as to our offer of proof. The last few words was we would take each one when we come to it, and your Honor would decide when we come to it.

The first part of the offer of proof dealt with we wanted to go into the question of these other transactions in other banks.

The Court: I think we really covered about all of that that there is any value to.

Mr. Perry: If your Honor's direction was to take each one and then rule on it, do you mean we should make an offer as to that or you have ruled on that?

The Court: My rulings are pretty clear on the bank transactions, but I was talking about III (a), (b) and (c).

Mr. Perry: Your Honor, may I, for the record, because after we are finished with this I would like to have this marked as Defendant's Exhibit A, (387) you know, may I for the record——

The Court: Here——

Mr. Perry: Do you want to give it back to us?

The Court: Do you want to put it in as an exhibit or my exhibit? Any way you want.

Mr. Perry: As a Court's exhibit might be better.

(Marked Court's Exhibit 2.)

The Court: That is the offer of proof.

Mr. Perry: That is the offer of proof, your Honor. Actually, then, your Honor's ruling as to subdivision (b) under I, which deals with the other bank transactions, you feel that we should not proceed further in that?

*Colloquy of Counsel*

The Court: I do not think we should go any further than we have. You missed part of the colloquy that Mr. Rosenblum, Mr. Hallinan and I had, but I think the net of it was that we have gone about as far as is profitable; if we go any further, Mr. Hallinan is then going to be able to come back with questions of his own, and I think we are going to spend a substantial period of time trying facts unrelated to the main issues of the case and it will not be helpful (388) to the jury.

Mr. Perry: It is offered for two reasons. I think when Mr. Rosenblum was questioning Mr. Mishel about these bank frauds in other banks he asked him whether Mishel claimed that Miller was a participant in them, and my recollection is he asked him as to one—I think maybe it was Bankers Trust Company or something—and Mr. Mishel said no; and then he asked him as to another one and at that time Mr. Hallinan objected on the theory that we were going into bank transactions which your Honor wanted left out. We would like to pursue it along those lines.

The Court: I do not think there is any basis for suggesting Mr. Miller had anything to do with any bank other than his own.

Mr. Perry: Except they were speaking of this partnership business.

The Court: That was Mr. Rosenblum's contribution, I think.

Mr. Perry: Your Honor's feeling, then, on (b) would be that we should not proceed further there?

The Court: Yes.

Mr. Perry: As to H, the modus operandi (389) of Mishel, where we would expect to elicit from him the fact that it was his practice to ingratiate himself with bank officials and then use them, that

would involve going into the same bank transactions and I assume your Honor's ruling would be the same.

The Court: I think as to the technique for ingratiating himself—for example, in Virginia—he may have taken advantage of an innocent person. There is no reason for arguing that is what he did here.

Mr. Perry: Judge, our thought would be to show that Miller was his dupe also.

The Court: That is the very thing that I think is an improper use of independent transactions, completely separate transactions.

Mr. Perry: As I noted, your Honor, under modus operandi we would expect to prove our contentions from Mishel himself on the stand. It would not be a question of producing other witnesses on our part.

The Court: If Mishel on the stand said, "I duped John Smith in Lynchburg, Virginia, by stiff accounts and with stolen bonds; I used him; he didn't (390) realize it," you would have no proper basis for arguing that is what he did with Miller.

Mr. Perry: Then, Judge, the last one is——

Mr. Rosenblum: Your Honor, would this be the same for the number of banks?

The Court: Yes.

Mr. Perry: And as to No. III, this is the point we are left with now, your Honor's feeling is you would take each one as you came to it?

The Court: Yes. Inasmuch as I have ruled on this, only III is still before us. I think Mr. Hallinan ought to have a chance to see it, because he ought to know what I am doing to the record he may have to defend some day.

*Colloquy of Counsel*

Mr. Perry: May I speak with Mr. Rosenblum?

Mr. Hallinan: May I look at it, your Honor?

The Court: You may want me to let in some of these things that I am now in the process of finally ruling out.

Mr. Perry: What is your Honor's preference?

The Court: I would like Mr. Hallinan to see this if you see no prejudice to the defendant.

Mr. Perry: Do you want our position?

(391) The Court: I would hear you if you do not want to disclose it.

Mr. Perry: Since your Honor has ruled on I and II, I see no problem there.

Mr. Rosenblum: May we have an exception?

The Court: Surely.

How do you want to handle this mechanically? Have you got an extra copy?

Mr. Perry: I will take a copy of this.

The Court: Take page 5 off, which you feel might give him an unfair advantage in cross-examining a potential witness.

Mr. Perry: I have given him, your Honor, a carbon copy of everything up to but not including III.

The Court: All right.

Mr. Hallinan: I will read this through, but if they are making an offer of proof to the Court that one side cannot see, I do not see how I can intelligently approach that.

The Court: It certainly puts you at a disadvantage.

Mr. Hallinan: It certainly does.

The Court: Nothing has gotten in yet.

(392) Mr. Hallinan: I feel we are in such an area that the constant and r etitious putting of ques-

tions is going to bring about much of the prejudice that I might seek to avoid if I knew——

The Court: Is there an item in here that you can use on cross-examination of a witness?

Mr. Perry: All three of them we will use against Mr. Mishel, if you permit us.

The Court: That is all right. You are at the point now where you have to tell Mr. Hallinan what you expect to develop on that, because you are about to put the questions.

Mr. Rosenblum: I understand your Honor's direction that we show it to him, so I will do it.

The Court: I will permit him to see III.

Mr. Hallinan: May I see that copy so it will be mechanically easier to manipulate?

Mr. Rosenblum: Mr. Hallinan mentioned repetitious questioning,—the jury is not here so we can discuss this to see if there is any soundness to my position—where you get a witness who gives you an answer which is definite as to a date, time and other thing. I think where we get a series of "I don't remember," "I don't remember," except in certain (393) things that the witness obviously cares to remember, I think I have no choice but to press him and repeat the question.

The Court: I have not given you any general ruling on that.

Mr. Rosenblum: I know your Honor has not, but Mr. Hallinan has just said in the light of the fact that these questions become repetitious—I know I go back into the subject. Sometimes I go off and then come back into the subject again hoping there is something else I may have questioned him about which will then enable the witness to give me an answer; and the fact that he says "I don't remember," "I don't know," "I don't remember," ob-

viously I just can't sit down the first time without trying to probe why he does not remember or without giving him something that may help him give me some answer. I think it is different from the usual case where you have an answer and go over it again just to have it repeated.

The Court: I won't generalize for you any more than I did for Mr. Hallinan.

Mr. Hallinan, why don't you look at III. That is the only thing left open. If you want the (394) other things in, I will hear you, but I do not think I will do it. However, on III I will hear you.

Mr. Hallinan: With respect to III, I think this offer of proof has to be judged in the light of what we already have before this jury. We have a man who admits to four convictions, who admits to desiring some consideration here, who admits to being a criminal from 1945 on, to being a bad boy. He even objected to the word "decent" when Mr. Rosenblum asked, "Were you a decent business man?"

He said, "I didn't say 'decent.'"

The Court: This goes to the very specific question of making false accusations.

Mr. Hallinan: Yes, but once we get off—I think they have had terrific opportunities to cross-examine this man on the issue of credibility on matters related closely enough to the facts in this case so that it sheds light on the issue here, which is a false statement case made by Mr. Miller.

As I told the jury, and I did it for a very specific reason, to keep in mind constantly during this case that we were charging the defendant with making false statements, because this is the type of case I think that it is very easy for the jury to (395) confuse, they will think that the basic case is a bond case, which it is not, I think to get off into these

three areas, we are necessarily getting close to a situation where I would then be entitled, and I am not so sure they can ask too many of these questions without getting into that area, where I am entitled to—on these three situations—offer some kind of evidence as to the truth or falsity, especially in a case like this, where you have a defendant who has much of his background, the illegal activity he engaged in before, now before this jury. I think there is a tremendous tendency in circumstances such as these, even if your Honor limits it to the mere asking of a question and an answer to that question——

The Court: We will have to rule on each question as we go along.

Mr. Rosenblum: In the light of what Mr. Hallinan said as to the kind of case, I first point out to your Honor and I respectfully ask that you consider the fact that when he says this is not a bond case, just a false statement case, on his direct examination when he finished, he ended up setting up (396) an alleged partnership between Gallagher, Miller and Mishel, and then went into the question of the bonds as being part of that partnership. I think if that is true——

The Court: I do not think I agree with you. Let us get the jury in now and let us get on with it.

Mr. Hallinan: Just one more remark I meant to make. I am sorry, but it just occurs to me now.

In this (b) under III, I think there it is clear we are not in an area where they are alleging that the defendant made a false statement. We go into a further area where the defendant, they claim, is urging somebody else to make false statements. That is not a false statement. It is reprehensible conduct, it is true.

The Court: Let us hear what happens on cross-examination.

Mr. Rosenblum: I can go into No III and your Honor will rule?

The Court: Question by question.

(The jury entered the courtroom at this time.)

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(397) Irving Mishel resumed.

Cross examination continued by Mr. Rosenblum:

Q. This Chernoff deal that you testified about, about your talks with Mr. Miller, was that supposed to be a secret between you and Mr. Miller? A. Well, it was more or less of a secret between us.

Q. Was it understood it was to be told to other people? A. Well, I had to tell Mickey about it. He was the one that signed them.

Q. Anyone else? A. I don't remember what you are driving at, sir, by "anyone else."

Q. You told us about the first occasion when you say you received the eight hundred-odd dollars after the first bond or bonds were cashed; do you recall that? A. The first bond was a thousand-dollar bond, I believe.

Q. And you received eight hundred-odd dollars and you gave Mr. Miller, you say, a hundred dollars? A. Correct.

Q. Let us take the second occasion. When did (398) you settle up on that? A. I believe right after that.

Q. You say you believe. Do you have any recollection? A. All my recollection is that after all eight or six or ten transactions went through, I gave him 10 per cent of the total amount.

Q. At one time? A. I may have given it to him in six times, eight times or four times, I don't recall, but I do recall——

Q. Or on one time for the last seven? A. No. I do recall giving him more than one time money, but I do

know at the end, after they all were cashed, that we were even as far as moneys were concerned.

Q. Can you give us any more definite recollection as to whether it was, say, on three occasions all together? A. I just can't say how many. I know I paid him in full.

Q. Did you yourself pay him? A. Yes, I paid him for those.

Q. You personally paid him in each instance? (399) A. In each instance I believe, to the best of my knowledge, I paid him.

Q. And you gave him cash? A. Yes.

Q. Right in the bank? A. Sometimes I would meet him across the street. Once I think it was Park Avenue and 59th Street there is a small bar in the hotel there. I met him and gave him some money there.

Q. Did you call him and tell him to meet you there? A. No, he told me to meet him.

Q. And on that occasion was it in connection with paying money for one of these Chernoff bonds? A. Yes.

Q. You recall that detail? A. I recall giving him some money.

Q. How much did you give him at that time? A. I don't recall.

Q. What particular cashing was covered at that time? A. Chernoff. Maybe 100, $105, $95.

Q. And the bank was at 48th Street and what avenue? (400) A. I think it was near Fifth Avenue.

Q. And in Rockefeller Plaza? A. Rockefeller Plaza. It is a street on the side.

Q. You met him at 59th Street, you say? A. I believe he lives near there or something. He said, "Meet me there," and I met him.

Q. To give him that $105? A. I may have given him for two sets of bonds. I don't know.

Q. What is your recollection? Don't you remember? A. No. All I remember is paying him, Mr. Rosenblum.

Q. Can you tell us where you paid him on each of the other occasions that you claim you paid him? A. There is a building across the street from the bank. I met him in the lobby of the building there at one time. I think it is the Time and Life Building.

Q. Where did you meet him in the Time and Life Building? A. Right in the lobby. You can't miss it. It is facing the bank. It is a side street, like. (401) The bank is here and the street comes this way (indicating).

Q. Was that for the purpose of making a payment in connection with the Chernoff bonds? A. Yes.

Q. And how much do you say you gave him on that occasion? A. I don't know. Maybe a hundred dollars, maybe for two sets or maybe for three. I don't recall exactly.

Q. Any reason why you could not give him that hundred dollars and the $105 right in the bank? A. Sometimes I did.

Q. Was there any reason you could not give it to him on those two occasions? A. I don't know. I just know I paid him, that's all I do know.

Q. Did you ever have anyone present at the time you paid him? A. Well, there were plenty of tellers there.

Q. In other words, you paid off in the presence of tellers; you paid off the money to Miller as his cut in this agreement that you say you had for him to assist you in putting through these Chernoff bonds? A. I paid him.

(402) Q. You say you paid him; is that right? A. I did pay him.

Q. That is what you say? A. That's right.

Q. Now, can you tell us where, exactly, in each instance? A. I can't tell you where in each instance. All I can tell you is I paid him.

Q. Can you tell us a single person who ever witnessed anything like this? A. No.

Q. No? A. Not that I know of.

Q. Do you remember when you appeared before Judge Joseph in the Bronx? A. When?

Q. In connection with the time when there was an adjournment given to you so that you could obtain new counsel in the place of Mr. Bierman. A. Vaguely.

Q. What is that? A. Vaguely. I don't remember the instance too well.

Q. About when would you say it was? (403) Would the date of February 20, 1953, be about right? A. It could be.

Q. Do you remember you testified about your lawyer telling you to cleanse yourself, so you went before McAvinue and you told him everything; right? A. That's right.

Q. Was that before you appeared before Judge Joseph, which was after you already had been sentenced below, and that is in New York County? A. I believe it was.

Q. Now, by that time had you already told the authorities everything? A. No.

Q. You had not? A. No.

Q. So that is it your testimony now that the statement that you gave to Mr. McAvinue was not complete? A. That's right. There is part of it I lied to him.

Q. You lied to him; is that right? A. I did.

Q. Now, can you tell us what part you lied about? A. I just lied to see if I could get some additional time to try to cover up these things, but (404) I don't recall what I lied about.

Q. Have you no recollection of what it was? A. No.

Q. None at all? A. I sent him on a goose chase some place or other—wild goose chase.

Q. Which one? A. I don't know.

Q. Have you talked to anyone since I have been cross-examining you in this case? A. Yes, I did.

Q. Mr. Malinky or anyone else? A. Yes, I talked to Mr. Malinky.

Q. About this wild goose chase? A. No. All he told me is, "Tell the truth. Don't worry about anything, don't worry if the Government case stands or falls or anything. Just tell the truth." And that's what I intend to do.

Q. He told you you have no worries; is that right?

Mr. Hallinan: I object.

Q. Isn't that right?

The Court: Sustained.

Q. When did he tell you not to worry about it? A. He didn't say it in those words, Mr. (405) Rosenblum. He said, "Tell the truth, and if somebody asks you, you say I said to tell the truth," and that's what I intend to do.

Q. What did he tell you about not worrying? A. He didn't put it in those words, Mr. Rosenblum.

Q. You used them, didn't you? A. Those are my words. He just said, "Tell the truth."

Q. You interpreted what he told you to mean you have no worry; is that right? A. No.

Q. Or that you have no worry, you should not worry about the outcome? A. No. All I interpreted it is to tell the truth. Mr. Hallinan said the same thing.

Q. What did he say about your worrying about your telling the truth? A. That's words of mine, not words of his.

Q. Do you remember when you were indicted in New York County? A. It was some time ago.

Q. Do you remember whether it was January 31, 1951? A. I don't know the date.

(406) Q. Can you tell us whether or not you told Mr. McAvinue what you testified heretofore in this trial as

all the facts before or after that date, January 3, 1951? A. I can't tell you either way; I don't remember exactly what I told Mr. McAvinue.

Q. How long did you continue to lie? You said you lied to Mr. McAvinue. A. That is right.

Q. How long did you continue to lie? A. A couple of months. I was trying——

Q. Was it a couple of months after you were indicted in New York County? A. I believe so.

Q. If the record shows, accepted subject to correction, it was January 31, 1951, would you say it was several months after that? A. I can't be sure exactly. All I know is——

Q. Go ahead. A. All I know is when Mr. Cutler told me to tell the truth, I respected his judgment and told the truth, and from there on in I told the truth.

Q. Didn't you testify that a time came when you were with Mr. McAvinue when Mr. Cutler came in? He is (407) a cousin of yours, isn't he? A. Pardon me. Mr. Bierman was my lawyer for these scenes.

Q. What is that? A. Mr. Bierman was my lawyer on that matter.

Q. I said, Mr. Leo Cutler is your cousin? A. That is right. That was after, that was two years later that Mr. Cutler came into the picture.

Q. Is it a fact then that over a two-year period the statements that you made to Mr. McAvinue had lies in them? A. A few lies. But in substance it was the truth.

Q. You mean that is your determination of that, isn't it?

Mr. Hallinan: It is also his determination that the question asked him about lies, of course.

The Court: All right. Don't argue.

Mr. Hallinan: I will object to that question.

The Court: What do you want done? Overruled. Go ahead.

Mr. Hallinan: It is too late.

Q. As late as 1953 had you told the truth to the authorities? A. 53? Yes, I believe in 1953 I told the truth.

(408) Q. How about the year 1952, had you told the truth? A. I don't know. I can't answer that. But 53 I did.

Q. For instance, when you were before Judge Joseph, by that time had you told the truth when you were switching lawyers? A. That is about the time.

Q. In other words, by that time you had told the authorities everything you knew and everything you recalled? A. Up until a point. Then they came up and they told us other things that we had done, and if I did it I confessed to it.

Q. You mean you only confessed to things when the authorities brought them to your attention? A. We did so many things that I didn't confess to the things that I didn't even remember myself, and when certain points were brought up and certain names were brought up, I said, "Gee, we did that, too." So I admitted it.

Q. Isn't it a fact that you said to Judge Joseph as late as February 20, 1953, that you told the authorities more? A. I did tell the authorities more after that.

(409) Q. Isn't it a fact that you told that to Judge Joseph at that time? A. I did tell the authorities more after that.

Q. Do you recall whether or not this happened on [illegible] occasion when you were before Judge Joseph on February 20, 1953? Now, tell us whether the following occurred: "The Court—" that is Judge Joseph, "According to the report you still have lots of information.

"The Defendant: Yes, I have, and I will give it willingly and unhesitatingly."

You told him you were an orphan and all that. Do you recall that? A. I don't recall that conversation, but I did subsequently make further statements. What you call statements, I mean oral statements, had interviews, I had

lots of them. But they weren't statements; I had interviews.

Q. You told us this morning that a couple of weeks before this trial you were shown and you read what you call your master statement; do you recall that? A. Yes, sir.

Q. Do you also read the statement you gave to Mr. McAvinue? A. No, sir.

(410) Q. When did you last see that statement? A. I never saw that statement.

Q. Do you know whether or not that statement is in the possession of the Government? A. I don't know one way or the other.

Q. In addition to the statement that you call the master statement, in the last few months, even prior to this trial, were you shown the statements made by you to any Federal agent, other than the master statement? A. What you call statements I call oral statements. I may have had an interview with an agent or agents and I have spoken to them. If you call them statements I don't call them statements.

Q. Were they reduced to writing in some form or other at the time? A. I don't know if they were reduced to writing or not. All I know is that I had many, many interviews with agents of the FBI, countless interviews, and I don't call them statements. The statement that I am talking about is the statement that I gave him about three years ago. After that they were interviews, not statements.

Q. Did you see them—I think you testified this morning about the subject, so I won't say what I recall your testimony to be—did you see the agents writing these (411) things? A. I have seen them make notations.

Q. Have you seen any of those statements? A. Not that I can remember.

Q. In the last few weeks when you saw the master

statement. A. I have seen the master statement in the last few weeks.

Q. Were you shown any other document other than what you call the master statement? A. I don't understand what you mean by any other document.

Q. Any other statement, a statement of any other witness, a statement made by Mr. Milenky, a statement made by Collins, a statement made by Motto, prepared by them or any other Federal agent? A. No, I haven't seen any of those statements, no, sir, none whatsoever. I seen my statement.

Q. You have told us that. That is the one you saw a couple of weeks ago? A. That is the master statement.

Q. That is the one— A. That is the big one.

Q. That is the big one, contains 50 pages? (412) A. It may have been forty, it may have been seventy. I don't know. I think it was about fifty.

Q. I was just referring— A. About fifty.

Q. You said about fifty pages? A. About that. It may have been more, it may have been less. Maybe it was more.

Q. You saw it recently, didn't you? A. A couple of weeks ago.

Q. Right? A. That is right.

Q. In that statement you say there was set forth by you everything that you knew concerning all these transactions you have testified about? A. That is right.

Q. Is that right? A. That is right.

Q. And anything that you have testified about is in that statement? A. Well, practically all of it is in that statement I would say.

Q. Pretty nearly all; right? A. Practically. There could be some isn't, some is; I don't know.

(413) Q. Who gave you that statement? A. Mr. Milenky and Mr. Hallinan.

Q. Did you take it home for any reason? A. No, I looked at it, I read it.

Q. Just to look at it? A. And I returned it to them.

Q. Just to look at it, was that the reason? A. I requested to look at it. I said, "I would like to see what I said three years ago."

Q. Didn't you remember? A. It is a long time ago; it isn't yesterday.

Q. Were you given the statement to read? A. I asked them, to read it, and they says, "O. K., we will let you read it."

Q. They didn't say to you, did they, "You rely on your recollection"? A. They did say that at one point, and I said I would like to read my statement.

Q. In other words, you insisted, didn't you? A. No, I didn't. I said I would like to read it. I didn't insist.

Q. So they gave it to you, is that right? A. That is right.

Q. Who gave it to you? (414) A. Mr. Hallinan there or Mr. Milenky or the FBI.

Q. Do you recall whether or not your testimony here conforms with what you read in that statement? A. Well, it is quite the same. It could vary a little. But in fact it is the same. In time it could be different.

Q. But the principal facts, you say, you recorded or you had the authorities record several years ago? A. The authorities recorded it.

Q. That is at your request? A. At their request.

Q. At their request you made a statement? A. That is right.

Q. At their request you made a statement which was reduced to this fifty page memorandum; right? A. That is right.

Q. That was several years ago when your recollection was better about things than it is now? A. That is right.

Q. You were then in a better position to remember times, dates and so on than you are now, which is three years later. A. I would say so.

Q. All right. Can you tell us whether or not it (415) was at about the time when you were indicted in New York County that you thereafter started to cleanse your soul and become a decent person? A. I don't remember exactly when it was.

Q. Well, did you commit any crimes after you were indicted in New York County? A. I may have.

Q. Don't you remember? A. I don't remember when I was indicted and I don't remember when the last crime was committed.

Q. Think back for a moment. After you talked with Mr. McAvinue and were cooperating with him, will you tell us whether or not after that time you committed any crimes? A. We may have committed some crimes; they may have had some bonds and had to get rid of them.

Q. You had to have some bonds that you had to get rid of? A. If we had some more bonds, we weren't going to burn them.

Q. You weren't going to throw them out, were you? A. Tried not to.

Q. This is after you had been indicted and you were cleansing your soul, you then went out and got rid (416) of some more hot bonds? A. This is before Mr. Leo Cutler came into the picture. Once he came into the picture that was the end of it.

Q. Leo Cutler is your cousin, isn't he? A. That is right.

Q. Do you remember a transaction in which you let Leo hold some stolen bonds as collateral for a deal? A. What bonds?

Q. Stolen bonds? A. Which stolen bonds? I don't remember any of that.

Q. Will you say you didn't? A. I don't remember, I said.

Q. And he is your cousin, isn't he? A. That is right.

*Irving Mishel—for Government—Cross*

Q. I think I covered so far your conviction and the assault, the 1897, possession of a blackjack or weapon, the details of the Alperin and the loans this morning. You recall that? Do you recall that? We have gone into the details on those.

Mr. Hallinan: Yes, I think we have, sufficiently so that they need no recapitulation here, your Honor. I object.

(417) Mr. Rosenblum: I am just drawing the witness' attention to the two remaining convictions that I have not touched on.

The Court: All right. Why don't we come to that and let the others go?

Q. You pleaded guilty, did you not, to two separate indictments in the Bronx? A. Yes.

Q. And that was before Judge Joseph? A. I believe that was the Judge.

Q. Can you tell us whether or not you pleaded guilty to six counts in an indictment in which you and Mr. Shatzberg conspired to commit forgery in the first degree and grand larceny in the first degree? A. In the Bronx?

Q. Yes. A. I remember I pleaded guilty, but I don't remember the circumstance.

Q. Well, do you remember Mr. Shatzberg? A. Yes, I know Shatzberg.

Q. Do you remember the Goldberg bonds of $4,563?

Mr. Hallinan: Your Honor, I am going to object on the ground that it is the fact of conviction that goes to the witness' credibility without going into——

(418) Mr. Rosenblum: I am just trying——

Mr. Hallinan: I know what you are trying to do,

Mr. Rosenblum. It is quite apparent, without going into all these specific details.

The Court: I will let him go on. Go ahead. Overruled.

Mr. Rosenblum: Would you read the question?

(Question read.)

Q. Do you recall that? A. I recall something about it.

Q. Is it a fact that you pleaded guilty to the crimes of forgery and larceny in the first degree that I just— A. I didn't plead guilty to no forgery in the Bronx.

Q. Was the charge there conspiracy to commit forgery in the first degree? A. In the Bronx?

Q. Yes. A. It was grand larceny in the first degree.

Q. Did you plead guilty to the crime of grand larceny in the first degree— A. In the Bronx?

Q. (Continuing)—in connection with the transaction (419) I referred to? And I don't wish to repeat it at the moment. Is that right? A. That is right.

Q Now, in another indictment, will you tell us whether or not you pleaded guilty to the crime of grand larceny in the first degree before Judge Joseph in connection with the cashing of bonds in the amount of $6,296.50, in the Bankers Trust Company? Do you recall that? A. I recall pleading guilty to two grand larcenies in the first degrees, but——

Q. Do you recall whether— A. What was the name on it?

Q. The name of the bonds, or the other defendant was Grace Pullian. A. Yes, I recall it.

Q. Do you recall it? A. Yes, sir.

Q. Did you bring Grace Pullian into this deal?

Mr. Hallinan: I object to that, your Honor.

The Court: I sustain the objection on that.

Mr. Rosenblum: I except.

Q. Now, will you tell us whether or not, and I think you already have told us—I think you said you (420) pleaded guilty to an indictment in this court, that is the Southern District, for a crime committed in another court which was brought here pursuant to a section of the law which permits transfer of cases? A. I admitted to that already.

Q. What was that about? Was that also bonds? A. Yes, sir.

Q. And did Sam Siegel also plead guilty, too? A. He pleaded guilty to the forgery of those bonds.

Q. He pleaded guilty to the forgery of those bonds and you pleaded guilty to what? A. I don't know what the charge was; something about transporting them or something.

Q. Was it transporting stolen bonds in interstate commerce? A. Something like that. I don't know the charge.

Q. That is the one for which you got a five-year sentence? A. That is right.

Q. Did you make any statements to any District Attorney or Assistant District Attorney up in Bronx County in connection with the things you have testified about? A. Yes, I think I gave them some statements.

(421) Q. Will you tell us, please, who you gave the statements to? A. Magistrate Francis X. O'Brien

Q. Was he an assistant at that time? A. That is right.

Q. How about Mr. Waltermede? A. I think he was an assistant also at the time.

Q. Do you recall about when you made those statements? A. Sometime in 53, I don't know exactly when, sometime in 1953 when Leo Cutler talked some sense into my head and told me to tell the truth and get this whole mess behind me. I think it was—I can't be sure, but I think it was sometime in 1953.

Q. In the light of your testimony so far can you now go back and tell us how soon after your arrest on the indictment in New York County on January 31, 1951, did

you make a statement to Mr. McAvinue in which you said it wasn't complete? A. I don't know, I can't answer that.

Q. Approximately how long? A. There is no way of me telling.

Q. In other words, it may have been even a matter of weeks or a month or two? (422) A. There is no way of me telling.

Q. It could have been— A. I can't remember, Mr. Rosenblum. It is something that I had no interest in, that I can't remember whether it was a week ago after I was arrested or a month or a year or two years, maybe longer. I don't remember. All I do know is that I did make statements to him.

Q. Can you tell us whether you made statements to any other assistant in New York County? A. I may have, I may have. I don't know. I may have.

Q. Can you tell us whether such statements were before or after you made to Mr. McAvinue? A. I don't know. It could have been before, it could have been after. It was around that time. Maybe before, maybe after. It is very hazy in my mind, those incidents of that. I would like to forget about them.

Q. You can't help us fix the date? A. I can't.

Q. Any better than you have just given? A. If I could, I would be very happy to.

(423) Q. Do you recall whether or not there was an occasion when you were waiting outside of a Grand Jury in this court to testify and you came in contact with Mr. Horan, one of the tellers in the Pennsylvania Exchange Bank at the time you were testifying about? A. May I hear that question?

(Question read.)

A. I don't recall one way or the other.

Q. You don't recall; you can't answer that yes or no? A. I don't know, I don't remember one way or the other.

Q. Do you know Mr. Horan? A. If I seen him I may know him.

Q. Otherwise you have no recollection? A. I know who Horan is. I don't think I have seen in maybe five years. If I seen him again maybe I would know him.

Q. Do you know whether at any time he was outside of the Grand Jury room the same time you were? A. He may have been. I don't know.

Q. Do you recall whether you had any discussion with Mr. Horan? (424) A. I don't recall having any discussion with him.

Q. You testified this morning about meeting Mr. Miller at Quo Vadis. Can you fix that date in some way? A. During the time I knew him. I met him there. I believe I took him to dinner there.

Q. You knew him, you said, from about 1946 on to the present time? A. About that.

Q. This is sometime between 1946 and today, is that right? A. Between 1946 and 1952.

Q. Well, will you see if you can get it down a little closer? A. I can't get it any closer. It was in that period of time I took him there to dinner.

Q. Did you go to Quo Vadis with him before or after the Chernoff transaction? A. I can't be sure one way or the other. I know I went with him.

Q. And you told the authorities, including Mr. McAvinue and Mr. Milenky and Mr. Hallinan, and Mr. Silverman and Mr. Castiglia and Mr. Peter Brown, and all the assistants, Federal and State, Mr. Waltermead (425) in the Bronx and Mr. O'Brien, all about these meetings with Mr. Miller?

Mr. Hallinan: I object to the form of the question.

Mr. Rosenblum: I will make it shorter.

Mr. Hallinan: All about these meetings, first of all, you can see there about twenty-five separate

questions. If he wants to break it down to a specific question——

Mr. Rosenblum: I will change the form of the question.

Q. Did you tell Mr. Milenky about your meeting with Mr. Miller at Quo Vadis? A. I did.

Q. And when did you tell him that? A. A couple of years ago.

Q. Did you tell it to Mr. McAvinue? A. I don't remember if I did or not.

Q. Did you tell it to Mr. Silverman? A. I don't remember. I don't know if I discussed it with them.

Q. Did you tell it to Mr. Peter Brown? A. I don't know if they discussed it with me.

Q. Did you ever fix the date for them as to when (426) that occurred? A. No, I just couldn't fix the date.

Q. You have fixed the date of the conversation that you say occurred where Mr. Gallagher and you were talking and Mr. Miller came in in 1946, 1947 or 1948, and I think one time you said it might be 1949.

Can you tell us whether you ever gave a date, a more definite date, to any official, either Mr. McAvinue or Mr. Hallinan or Mr. Milenky, or Mr. Motto, or Mr. Collins, or any of the assistants in the Bronx or New York County that we referred to before?

Mr. Hallinan: I object to the question on the ground that it includes about twenty-five questions. The first part I will object to the form because it incorporates something that is argumentative.

The Court: Well, what you would really like to know is whether he ever gave to any law enforcement official a date for the Gallagher-Miller meeting.

which you testified about, the time that you met the defendant.

The Witness: Shall I answer that?

The Court: Yes, if you can.

A. I did give them the date.

Q. What date did you give? A. I don't remember now, but I remember giving him (427) some approximate time.

Q. Then you gave him an approximate date by month and year? A. Just the approximate time.

Q. But was it limited to some month and year? A. I don't remember exactly. I know I gave them in my statement the approximate time that this incident took place.

Q. Did you give him what you testified here, 1946, 1947, 1948, and I think in one instance you referred to it as possibly being 1949? A. Some part of my statement may read that.

Q. Well, did you make that statement that way to them, or did you give them a more approximate time, fixing the year and month, say, if you couldn't fix the date? A. I don't remember how the statement read. The statement is available.

Q. In other words, if you gave a more approximate date you don't recall what the date is at this time? A. That is right.

Q. Did you give any law enforcement agency, and I am including New York County, Bronx County, and the Federal Office, Southern District of New York, any figure—did you give to any of the enforcement officers (428) of either New York County, Bronx County, Federal Office here an approximate figure as to the amount that you say you paid to Mr. Miller in connection with what you identified as stiff accounts? A. No, I didn't give him no figure.

Q. No figure at all? A. Just that $150 a month.

Q. You never gave them an amount? A. Pardon me?

Q. You never gave them a total or approximate total? A. Not that I remember.

Q. Did you, in connection with the Chernoff bonds give them a definite figure as to the amount you say you paid Mr. Miller? A. On that I gave them a figure.

Q. What amount did you tell them? A. 10 per cent.

Q. Straight? A. Straight 10 per cent.

Q. To the penny? A. Give or take a few dollars.

Q. Did you tell him as to the interest that the other people had in the percentages that you testified to (429) here at the time you made the statement to either Federal or State authorities? A. I did.

Q. What did you tell them was the amount of Nitzberg's interest in the moneys received from the cashing of the Chernoff bonds? What percentage? A. He had about 15 per cent, ntaybe 20, around that.

Q. What did you tell them? A. That is what I told them, just like I am telling you.

Q. What is the fact? A. That is the fact.

Q. Which? It couldn't be both, could it? A. We shared it after paying for the cost of the bonds, given Miller his cut, given Mickey for having signed them, Nitzberg and I cut the balance of the money up.

Q. What percentage was left after you took care of Mickey and Miller and Pace, from whom you obtained the bonds? A. Maybe 45 or 50 per cent was left.

Q. And 50 per cent or 55 per cent you divided among Pace, Miller— A. No, no.

Q. (Continuing)—and Rosenberg? (430) A. No. When we paid 15 per cent for the bonds, we paid 15 per cent of the face value which is maybe 25 per cent of the net value.

Q. That is what you said before. A. We got the money, 10 per cent of that net value went to Miller. We took off the original amount for the cost of the bonds. Mickey

got 15, 20 per cent for signing them, and me and Nitzberg took the rest of the money and cut it up.

Q. 15 or 20 per cent? A. Yes, for signing them. It amounted to about as much as we got, if you take a pencil and a piece of paper and figure it out.

Q. Do you recall that is what you testified yesterday, 15 or 20? A. Maybe 10 or 15; I am not sure of the figures. All I know is everybody was happy.

Q. In addition to the law enforcement officers I refer to, did you ever speak to any secret service agent outside of Sershen? A. I may have spoke to a lot of them.

Q. And Mr. Sershen, you say, you didn't give him a statement, is that right? A. Are you talking about the time of my arrest now?

Q. At any time. Did you ever give Mr. Sershen a (431) statement? A. Written statement?

Q. A statement which he recorded and that you made, any oral statement to him that you saw him record or an oral statement that he didn't record? A. I don't ever remember giving Mr. Sershen any kind of statement.

Q. Would you say you didn't? A. I never remember giving him any.

Q. How about any other secret service agent? A. Such as?

Q. Do you remember the names of any? A. If you can refresh them for me maybe I would remember.

Q. Wouldn't you remember any? A. I may know some other ones.

Q. How about Collins? Was he a secret service agent? A. Collins?

Q. Yes. A. I don't recall that name.

Q. What other name that you do recall, if you have a recollection of any agent that you talked with in the secret service—A. I don't recall——

(432) Q. (Continuing)—outside of Sershen? A. I don't recall the name Collins at all.

Q. Do you recall any names? A. No, but if you refresh my memory I may.

Q. Do you have any recollection of the names? A. Not that I remember.

Q. Do you remember that you did talk to a number of secret service agents? A. I have.

Q. Was that in connection with Chernoff? A. I don't recall what I talked to them about.

Q. Can you tell us about when you talked with them? A. I have spoken to them from time to time.

Q. During what years? A. During the last four years.

Q. How many years do you include in the last few years? A. The last four, five years, three years, I spoke to them.

Q. Do you know whether or not the statements you made to them with reference to the Chernoff transaction are the same as the ones, the facts are the same as those you testified to here in this courtroom? (433) A. I don't know what I made to them regarding the Chernoff bonds, I don't recall at all making any statements to them. If I am shown the statement I will be glad to tell you if it is true or not.

Q. Do you recall, Mr. Mishel, when you started to do time in connection with the sentence which was imposed upon you by Judge Mullin? A. The beginning of 1953.

Q. The beginning of 1953? A. I believe it was January, 1953.

Q. Do you recall whether at any time after or sometime after the date you gave, which I think you said beginning in 1953, while you were in the same jail with Wissenfeld, do you recall whether in order for you to obtain, to curry favor, to obtain benefits from the FBI, do you recall whether you urged Wissenfeld to give false testimony in another bond matter?

Mr. Hallinan: I will object to this on the grounds that I have indicated to your Honor before, that we are not only one area removed from the specific facts in this case but now we are two areas removed as without specification, and on the second ground that I think at this point in the trial it is cumulative.

The Court: I will let him answer the question. (434) Do you want the question read back?

(Question read.)

A. I don't recall that at all.

Q. You don't recall it? A. No, sir.

Q. No recollection at all? A. No, none at all.

Q. No? A. None at all.

Q. Do you recall whether while you were in jail you offered to give testimony in connection with the Jelke investigation and the ensuing trial in consideration for a parole, which was rejected because it was found to be untrue? A. I don't recall that at all.

Q. You have no recollection of that? Were you called down to the District Attorney's office in connection with your offer? A. Was I called down?

Mr. Hallinan: Just a minute. In connection with your offer, he hasn't got an answer on that yet, your Honor.

The Court: In other words, the question is objectionable as to form because he has never said he (435) made the offer, or has no recollection.

Mr. Rosenblum: He didn't say no and he didn't say yes.

The Court: You ask him without incorporating any facts of what he recalls.

Mr. Rosenblum: All right.

Q. Will you tell us when you answered, "I don't remember", whether by that you say your answer is "No" or your answer is "Yes", or you have no recollection, either way?

Mr. Hallinan: I think this is an effort, your Honor, to play around with what "I don't remember" means.

The Court: I think the trouble is that a question which you didn't object to had several questions in one and, therefore, we can't tell exactly what his answer does mean, and I think the thing to do is, if you want to pursue that any further, you break up the question into——

Mr. Rosenblum: I will break it up.

Q. Do you recall whether or not, after you were in jail, you communicated with Mr. Frank Hogan's office, the District Attorney's office, in connection with the Jelke investigation and the trial which later followed? (436) A. I don't remember that at all.

Q. Would you say you didn't? A. I just don't remember.

Q. Do you recall whether you were brought down there, that is, to the District Attorney's office? A. When?

Q. At any time after you went to jail, in connection with the Jelke investigation? A. I just don't remember.

Q. Would you say that you weren't? A. I just don't remember.

Q. Were you questioned about it at the District Attorney's office? A. I just don't remember.

Q. Would you say you weren't questioned? A. I don't remember.

Q. Did you state to the District Attorney's office that you would cooperate with them in return for a recom-

mendation for an early parole? A. I just don't remember that incident at all.

Q. Did they tell you that you just weren't telling the truth and they wouldn't use you? A. I just don't remember.

(436a) Mr. Hallinan: I object to this, your Honor.

The Court: I think that is improper, and I will strike it out, and I will remind the jury again that the incorporation of facts in a question doesn't constitute any proof whatever before you; the only testimony is from the answers of the witness.

(437) Q. Can you tell us whether or not after——

Mr. Rosenblum: I except, your Honor.

Q. Will you tell us whether or not after you went to jail you represented to a Secret Service agent by the name of Motto that you had some knowledge of a certain theft of blank unissued Government bonds from a bank?

The Witness: Will you read that question again? (Question read.)

A. I don't remember that incident.

Q. What is that? A. I just don't remember that incident. I remember speaking to Motto, but I just don't remember that incident.

Q. Would you say it did not occur? A. I don't say it did and I don't say it didn't.

Q. That is your best answer—you don't remember? A. I just don't remember.

*Colloquy of Counsel*

Mr. Rosenblum: I may be finished. I would like a minute. May we have our recess now, your Honor?

The Court: All right. We will take a ten-minute recess.

(438) (Short recess.)

(Jury in box.)

Mr. Rosenblum: I now respectfully ask your Honor that the statements that this witness has testified about be produced by the Government for your Honor so your Honor may examine them under the *Krulewich* case to see whether or not there is something in them which would entitle me to use them for cross-examination.

Mr. Hallinan: I would be very happy to. In that connection, I would inform your Honor that we have no state statements. The master statement I have in my office, and I would be happy to make that available to your Honor.

Mr. Rosenblum: Are there any statements other than that one?

Mr. Hallinan: I think my statement was clear. We have in our office one statement which has been referred to here as the master statement. Any other statements from the beginning of time until now I know nothing about, I know not where they are.

Mr. Rosenblum: Might I request that the statements in the possession of the FBI be produced for the same purpose, so that your Honor may see them (439) and see whether I am entitled to use them in further cross-examination?

The Court: All right. I will ask you to produce any previous statements in your possession or in the possession of the prosecution generally and Mr. Malinky's possession in the absence of some

contravening claim of privilege as far as the prosecution is concerned, and I will look them over.

Mr. Rosenblum: May it also include Secret Service?

Mr. Hallinan: I do not have those in my possession.

Mr. Rosenblum: The Government can get them, obviously.

The Court: I will look at the ones that you have in your possession and if, on the basis of that, I conclude I want you to look for any more, I will let you know.

Mr. Rosenblum: Then you will keep open for the moment whether or not any statements, if there were statements made to the Secret Service, which is part of the same Government——

The Court: I tell you, I am not at this point going to start ransacking all the Government files in (440) the various departments looking for any stray notes. I will look at the statements that Mr. Hallinan can get or Mr. Malinky can get for me, and then on the basis of that, if I conclude we should do any more ransacking, we will do it. Otherwise we won't.

Mr. Rosenblum: I have no further questions.

The Court: Have you anything further?

Mr. Hallinan: No, no further questions.

(Witness excused.)

SIDNEY HACK, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Hack, what is your business? A. I am an importer of musical instruments.

Q. Do you know a man by the name of Irving Mishel? A. Yes, I do.

Q. Did there come a time when Irving Mishel asked you to sign——

> Mr. Rosenblum: If your Honor pleases, I think it is leading as far as it is going, and I (441) think on direct examination the question should be put to get testimony from the witness.
>
> Mr. Hallinan: If Mr. Rosenblum can suggest the question or a shorter way, all right.
>
> Mr. Rosenblum: He is going to say what occurred. The vice is done once you put a leading question, something you should not put in. It is obvious. That is what I tried to stop with the other witness, and I am trying to stop it now.

By the Court:

Q. How long do you know Mr. Mishel? A. About ten years.

Q. Did you ever have any business transactions with him? A. Yes, I have had some.

Q. Did any of them relate to the Pennsylvania Exchange Bank? A. Yes.

Q. Will you tell us what those transactions were?

> Mr. Hallinan: May I approach the bench, your Honor, please?
>
> The Court: All right.

*Colloquy of Counsel*

(The following took place at the bench, out of the hearing of the jury.)

(442) Mr. Hallinan: I am not putting on this witness for very many reasons, and I do want to limit my interrogation. The only specific purpose for putting this witness on is that he did sign these two signature cards Thomas Young and John Case at the request of Mishel; secondly, that he never made any personal use of these two accounts. That is about the sum and substance of it.

The Court: Very well. I will sustain your objection to my question, and I will let you direct his attention to those particular cards.

Mr. Rosenblum: Not give the details as to how something was done. I would like to hear it from the witness.

Mr. Hallinan: You can make him your own witness.

The Court: I will let him lead on that because of the danger of opening up general subjects, which I should have thought of myself, that he does not want to go into.

Very well.

Mr. Rosenblum: I do not want to say I agree because I cross-examine him I am making him my own witness. The witness is a hostile witness.

(443) The Court: We will not hold your silence against you.

(Proceedings were resumed within the hearing of the jury as follows.)

The Court: I am sustaing an objection to my own question, and we will now go on with Mr. Hallinan's next question.

By Mr. Hallinan:

Q. Did there come a time, Mr. Hack, when you signed two signature cards, bank signature cards, for Mr. Mishel at his request? A. Yes.

Q. Do you recall——

Mr. Rosenblum: I do not think it has to be that leading.

The Court: Don't you have the exhibits?

Mr. Hallinan: Yes.

The Court: You can show him that and ask him how it came about.

Mr. Hallinan: I want to get a general time fixed first.

Q. Do you recall when that was? A. It was about the beginning of 1949.

Q. I show you Government's Exhibits 10— (444) first of all, do you recall what names you signed on the signature cards? A. Yes. John Case and Thomas Young.

Q. I show you Government's Exhibits 10 and 11 in evidence and ask you what they are? A. Well, these were the signature cards which I signed.

Q. The ones you have just referred to? A. Yes.

Q. And on Government's Exhibit 10, to make it more specific, did you sign the name in handwriting "Thomas Young" on that exhibit? A. Yes.

Q. And likewise with Government's Exhibit 11, did you sign the name "John Case" on that? A. Yes, I did.

Q. What did you do with these cards after you had signed them? A. Then Mr. Mishel took them from me.

Q. What condition were they in when you gave them to Mr. Mishel? A. They just had the signature on them, nothing else.

Q. Did you sign checks in connection with these (445) two accounts? A. Yes, I did.

Q. Were those checks signed in blank? A. That I don't remember.

Q. Did you make any personal use of these two accounts? A. No.

Q. Did you ever identify anyone at the Pennsylvania Exchange Bank in connection with the cashing of United States Savings Bonds? A. No.

Mr. Hallinan: You may inquire.

Cross examination by Mr. Rosenblum:

Q. Were these signed in the Pennsylvania Exchange Bank? A. No. They were signed at Mr. Mishel's office.

Q. At Mr. Mishel's office? A. Yes.

Q. And who was present at that time? A. Oh, I don't remember.

Q. But it was at Mr. Mishel's office? A. Yes, it was at Mr. Mishel's office.

Mr. Rosenblum: No further questions.

(Witness excused.)

(446) Mr. Hallinan: Mr. John Brennan, please.

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JOHN J. BRENNAN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Brennan, where are you employed? A. The Pennsylvania Exchange Bank.

Q. In what capacity? A. At this time?

Q. Yes. A. Cashier.

Q. Is that an officer at the bank? A. It is.

Q. How long have you been employed at the Pennsylvania Exchange Bank? A. Nine years.

Q. Now, are you familiar with the duties of guards in the Pennsylvania Exchange Bank as they existed in 1949 and 1950? A. Yes, sir.

Q. Keep your voice up, please. A. Yes.

Q. Will you tell the Court and jury what those (447) duties were? A. A guard is employed to, firstly, guard the bank's premises, secondly, assist customers of the bank or non-customers of the bank who would make inquiries of them, furnish information to them, help them fill out deposit slips, withdrawal slips, things of that nature. He also is a vault attendant, acts in that capacity on a part-time basis as called for, and as a messenger within the office to carry messages from an employee to another employee or to an officer or from an officer to an employee, jobs of that nature.

Mr. Hallinan: You may inquire.
Mr. Perry: May I, your Honor?
The Court: Yes, certainly.

Cross examination by Mr. Perry:

Q. Mr. Brennan, you say you are the cashier of the bank; is that right? A. Yes, sir.

Q. What you mean is that you are an employee of the bank? A. That's true.

Q. As Mr. Kennedy when he was alive was an employee of the bank; is that correct? (448) A. True.

Q. And Mr. Miller, when he was the president of the bank, was an employee there as well? A. Yes, sir, he was.

Q. And all of you—you, Mr. Miller, Mr. Kennedy, other officers of the bank—are employees of the bank? A. True.

Q. And when you spoke now of the duties that the guard has, you mean the duties of his employment as an employee of the bank; is that right? A. Yes, sir.

Q. There is no question of any special duties with relationship to Mr. Miller as president of the bank? A. No, sir.

Q. And no question of any special duties with relationship to you as cashier of the bank? A. No, sir.

Q. All of you are employees? A. Yes, sir.

Q. And the duties that you spoke of for the guard and the duties that you have as cashier and the duties that the president has are all duties that each (449) of you owe to your employer, and your employer is the bank? A. Yes.

Mr. Perry: No other questions.

The Court: Anything else, Mr. Hallinan?

Re-direct examination by Mr. Hallinan:

Q. Was the guard or any guard during that period of time subject to the directions of the president of the bank? A. Any guard or any other employee, yes, would be subject to the directions of the president.

Mr. Hallinan: That is all.

The Court: All right, thank you.

(Witness excused.)

Mr. Hallinan: Virginia Graef.

VIRGINIA GRAEF, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Halliñan:

Q. Miss Graef, you are going to have to keep your voice up so that everyone in the courtroom can hear you. Where are you presently employed? (450) A. The Irving Trust Company.

Q. In what capacity? A. I open special checking accounts and savings accounts.

Q. And how long have you been employed by the Irving Trust Company? A. About six years.

Q. Where were you employed prior to that time? A. The Pennsylvania Exchange Bank.

Q. And for what period of time were you employed at the Pennsylvania Exchange Bank? A. September of 1947 to February of 1950.

Q. What was your job at the Pennsylvania Exchange Bank? A. I was the special checking teller.

Q. Did you have any other duties? A. Yes. Do you want me to tell what my duties were?

Q. Yes. A. I would take in deposits, cash checks, cash bonds, enter them in the bond register and post on the special checking ledger.

Q. Were you at that time the regular teller handling the cashing of United States Savings Bonds? (451) A. Yes.

Q. Now, while you were employed there during the period of time you have told us about who was president of that bank? A. James Miller.

Q. Do you see Mr. Miller here in this courtroom? A. Yes, right over there (indicating).

Mr. Hallinan: May the record indicate the witness has identified the defendant?

The Court: Yes.

*Virginia Graef—for Government—Direct*

Q. Now, while you were employed at the bank, was there a procedure to be followed with respect to the cashing of these United States Savings Bonds where the person had no account at the bank and was not known at the bank? A. Yes, there was.

Q. Will you tell the Court and jury, please, what that procedure was? A. I would ask the person to go over to see one of the officers of the bank to have the bonds approved, because I had no authority to cash bonds if the person was not known to me. The officer would initial the bonds, the person would come back to my window, I would get out a bond chart to see (452) what amount had to be paid out, I would place the stamp on the face of the bond. The stamp consisted of the name of the bank, the date, the amount paid out and a place where I would sign my name. I would then have the person fill out a bond redemption form. The redemption form consisted of the date, the name of the bank and the amount paid out. This was used at the end of the day to help me prove up my cash and later became a permanent bank record.

Q. Now, if you can, would you turn around and look at that chart, that diagram that is right behind you. A. Yes.

Q. I will give you a pencil and ask you to mark on that exhibit the initials "V. G.", your own initials, near or at the cage, as I will refer to it, that you occupied when you were working at that bank. A. I have marked it (writing).

Q. Now would you mark with a square the spot on that diagram with respect to your cage where the defendant Miller had a desk? A. (Witness writes.)

Q. Would you write "Miller" in that, please? A. (Witness writes.)

(453) Q. Now, from where your cage was, indicating "V. G." on Government's Exhibit 12, could you see Mr. Miller's desk? A. Yes.

Q. If you recall, do you recall approximately how high your cage was? A. Well, I would say it was about up to here (indicating). That is approximate.

Q. And what was above the top of that? A. There was nothing above the top of that.

Q. Are you familiar with a person by the name of Irving Mishel? A. Yes, I am.

Q. How are you familiar with him? A. From coming into the bank.

Q. Do you recall during the period December 29, 1949, to February 20 or sometime in early 1950 cashing bonds registered in the name of Chernoff? A. Yes, I do.

Q. Do you recall on approximately how many occasions you cashed bonds registered in that name? A. Five times.

Q. Once again I will have to ask you to keep your voice up.

(454) Will you tell the Court and jury, please, everything that you recall about the cashing of those bonds? A. Mr. Kennedy, the bank guard, brought bonds over for me to cash. I asked him where they came from and why they hadn't been initialed. They were in the name of Nat or Blanche——

> Mr. Rosenblum: I object to any conversation between this lady and Mr. Kennedy if it was not in the presence of the defendant.
>
> The Court: I will take it. I will overrule the objection.
>
> Mr. Rosenblum: Exception. May I point out two things? First, it violates the hearsay rule; secondly, Mr. Kennedy is dead.
>
> The Court: I realize both things except I do not concede it violates the hearsay rule, although it is hearsay.

A. I asked Mr. Kennedy why the bonds hadn't been approved and where they came from.

Mr. Rosenblum: I cannot hear the witness.

Q. You will have to speak much more loudly. A. He said it was all right to cash them, they were from Mr. Miller. I looked over at Mr. (455) Miller's desk and saw Irving Mishel seated there talking to Mr. Miller. I cashed the bonds, gave Mr. Kennedy the money, watched him take it over and place it on Mr. Miller's desk. Irving Mishel was still seated there talking to Mr. Miller. That's as much as I saw.

Q. Was anyone else besides Mr. Miller and Mr. Mishel at Mr. Miller's desk at the two times you referred to? A. No.

Q. I show you Government's Exhibit 1 in evidence, Miss Graef, and ask you if you cashed this bond at the Pennsylvania Exchange Bank (handing to Witness)? A. Yes, I did.

Q. I ask you when you cashed that bond? A. December 29, 1949.

Q. And will you tell the Court and Jury, please, what notations you placed upon that bond? A. Well I have the amount written in ink, and I have written my name on here.

Q. Did you place any stamps on the bond? A. Oh, yes, the stamp was placed on here also.

The Court: Excuse me. When you say the amount, you mean the amount you paid out?

(456) The Witness: The amount I paid out, yes.

Q. What stamps did you put on it? A. I put a stamp on showing the amount paid out, the name of the bank, the date and the place where I signed my name.

Q. I show you Government's Exhibit 2 in evidence—first of all, with respect to Government's Exhibit 1, in whose name is that registered? A. Nat Chernoff or Blanche Chernoff.

Q. I show you Government's Exhibit 2 in evidence and

I ask you if you cashed the bonds in that exhibit at the Pennsylvania Exchange Bank? A. Yes. These are eight bonds cashed by me January 9, 1950.

Q. And I ask you with respect to that exhibit what notations you placed upon that bond? A. The bank stamp appears on here with the amount paid on each bond, the date and the name of the bank and my name signed.

Q. I show you Government's Exhibit 4 in evidence and I ask you if you cashed those bonds at the Pennsylvania Exchange Bank? A. Yes. These are seven bonds cashed by me. The bank stamp appears on here with the name of the (457) bank, the amount paid out——

Mr. Rosenblum: Would you mind keeping your voice up? It is very hard to hear you.

A. The bank stamp appears on here with the amount paid out, my name, the name of the bank also.

The Court: I did not get the date on that.

The Witness: I am sorry. The date of this is January 30, 1950.

Q. I show you Government's Exhibit 5 in evidence and ask you if you cashed these bonds at the Pennsylvania Exchange Bank? A. Yes, these are eight bonds cashed by me February 6, 1950. The name of the bank appears on here, the amount paid and my name written on.

Q. Now I show you Government's Exhibit 6 in evidence and I ask you if you cashed these bonds at the Pennsylvania Exchange Bank? A. These are 11 bonds cashed by me February 9, 1950. The bank stamp appears on it, the amount paid out and my name written on it.

Mr. Rosenblum: Keep your voice up, Miss Graef. We cannot hear you.

*Virginia Graef—for Government—Direct*

Q. Miss Graef, Government's Exhibits 1, 2, 4, (458) 5 and 6, which you have just looked at and identified, were any of these bonds signed in your presence? A. No.

Q. Were any of the bonds in those same exhibits presented to you by anyone claiming to be Nat Chernoff? A. No.

Q. Was anyone at any time introduced by anyone named Nat Chernoff or introduced to you as Nat Chernoff while you were at the Pennsylvania Exchange Bank? A. No.

Q. Miss Graef, I show you Government's Exhibit 1-A in evidence, which is a bond redemption form, and I ask you if this is the redemption form which accompanied the bonds on December 29, 1949? A. Yes, it is.

Q. What notations did you make on Government's Exhibit 1-A in evidence? A. I have the amount written on here, and I have the bank stamp placed and the date.

Q. I show you Government's Exhibit 2-A in evidence and I ask you the same questions with respect to that? A. The date January 9, 1950, the amount, and I have "Miller" written in here in my handwriting.

(459) Mr. Rosenblum: Would you please keep your voice up. I will ask that the answer be read, please. I just cannot hear it.

The Court: Read the last answer.

(Last answer read.)

Q. Now I show you Government's Exhibit 4-A in evidence and I ask you if this accompanied the bonds which you cashed on January 30, 1950? A. Yes.

Q. What notations did you make on that exhibit? A. I have the amount written here, the date and the bank stamp.

Q. I show you Government's Exhibit 5-A in evidence and ask you if this is the bond redemption form which accompanied the bonds which you cashed on February 6, 1950? A. I have the amount paid out written here and the date——

Q. I am sorry. Is that the— A. I am sorry. Yes, it is.

Q. What notations did you make on that? A. The amount paid out, the date and the bank stamp.

Q. I show you Government's Exhibit 6-A and (460) ask you if that is the bond redemption form which accompanied the bonds which you cashed on February 9, 1950? A. Yes. I have the date and the amount paid out here.

Q. Now I show you Government's Exhibit 3-A, which is the redemption form which accompanied bonds on January 19, 1950. I ask you if any of the notations on that redemption form are in your handwriting? A. Yes, the amount paid out is in my handwriting.

Q. Now I show you once again Government's Exhibit 2-A in evidence, which is the redemption form which accompanied the bonds you cashed on January 9, 1950, and I ask you—I think you have already testified to it—did you write in your own handwriting the name "Miller" on the face of that redemption form? A. Yes, I did.

Q. Why did you write the name "Miller" on that redemption form? A. Because he was the officer who had something to do with the cashing of the Chernoff bonds.

(461) Q. Now I ask you with respect to these redemption forms which you have just looked at and pointed out various things on, 1-A, 2-A, 4-A, 5-A, and 6-A, were any of these bond redemption forms signed in your presence? A. No, they were not.

Q. Were these bond redemption forms presented to you by anyone claiming to be Nat Chernoff? A. No, they were not.

Q. Do you know anyone by the name of Thomas Young? A. No, I do not.

Q. Was anyone ever presented to you at the bank by the name of Thomas Young by anyone? A. No.

Q. I show you once again Government's Exhibits 5-A and 6-A in evidence, and ask you if the name Thomas Young appearing on both of those were signed in your presence? A. No, it was not.

Q. Did Irving Mishel ever introduce anyone to you as Nat Chernoff? A. No, he did not.

Q. As a matter of fact, did you ever speak to (462) Irving Mishel at the bank? A. No, I did not.

Q. Miss Graef, what form did the redemption forms come in while you were at the bank? A. They came in padded form.

Q. And where were those pads kept? A. In my cage.

Q. You were the bond teller. They were kept at the bond teller's cage, your cage? A. That's right.

Q. Did you ever give a padful of these redemption forms to Irving Mishel? A. No, I did not.

Q. Did you ever give a padful of redemption forms to anyone while you worked at the bank? A. No.

Q. And by that I mean in blank? A. No, I didn't.

Mr. Hallinan: May we have this marked 13, please.

(Marked Government's Exhibit 13 for identification.)

Mr. Hallinan: 14.

(Marked Government's Exhibit 14 for identification.)

(463) Mr. Hallinan: 15.

(Marked Government's Exhibit 15 for identification.)

Mr. Hallinan: 16.

(Marked Government's Exhibit 16 for identification.)

Mr. Hallinan: 17.

(Marked Government's Exhibit 17 for identification.)

Mr. Hallinan: 18.

(Marked Government's Exhibit 18 for identification.)

By Mr. Hallinan:

Q. Miss Graef, I show you Government's Exhibit 13 for identification and I ask you what it is? A. It is a bond register sheet on which I entered the Chernoff bond cashed by me December 29, 1949.

Q. Is that from the Pennsylvania Exchange Bank? A. Yes.

Q. Is that record kept in the regular course of business at the bank? A. Yes, it is.

Q. And is it the regular course of the business (464) of the bank to keep that record? A. Yes.

Q. I show you Government's Exhibit 14 for identification and ask you what it is (handing to witness)? A. Bond register sheet on which I showed the cashing of the Chernoff bond on January 9, 1950.

Q. Is that maintained by the Pennsylvania Exchange Bank? A. Yes.

Q. Is it kept in the regular course of business? A. Yes.

Q. And is it the regular course of business of the bank to keep that record? A. Yes.

Q. I show you Government's Exhibit 15 for identification and ask you what it is? A. It is the bond register sheet on which I entered the cashing of the Chernoff bonds on January 19, 1950.

(465) Q. And is this a bank record kept in the regular course of business? A. Yes, it is.

Q. And is it the regular course of business of the bank to keep this record? A. Yes, it is.

Q. I show you Government's Exhibit 16 for identification and ask you what it is. A. The bond register sheet on which I have entered the Chernoff bonds cashed on January 30, 1950.

Q. Is this a document of the Pennsylvania Exchange Bank? A. Yes, it is.

Q. And is it kept in the regular course of business? A. Yes, it is.

Q. And is it the regular course of business for the bank to keep that record? A. Yes.

Q. I show you Government's Exhibit 17 for identification and ask you what it is. A. Bond register sheet on which I have entered the Chernoff bonds cashed on February 6, 1950.

Q. And is this a bank record also? (466) A. Yes, it is.

Q. Kept in the regular course of business? A. Yes.

Q. And is it the regular course of business to keep this record? A. Yes, it is.

Q. I show you Government's Exhibit 18 for identification and ask you what it is. A. This is also the bond register sheet——

Mr. Rosenblum: A little louder, please.

A. This is a bond register sheet but I don't see in my handwriting on here.

Q. Are there entries reflecting— A. Yes, there are entries of the Chernoff bonds in here also. On February, 1950—no, that is the date of it.

Mr. Rosenblum: I cannot hear the witness, your Honor.

The Court: Read the answer as far as it has gone.

The Witness: I am looking for something.

A. Well, there are Chernoff bonds on here on February 15, 1950. It is not in my handwriting. And on February 20, 1950.

(467) Q. Do you recognize this as a document of the Pennsylvania Exchange Bank? A. Yes, I do.

Q. And is this kept in the regular course of business? A. Yes, it is.

Q. And is it the regular course of business for the bank to keep that record? A. Yes, it is.

Mr. Hallinan: The Government offers Government's Exhibits 13 through 18 (handing to Mr. Rosenblum).

The Court: Is there anything else from this witness?

Mr. Hallinan: Just a few questions, your Honor.

The Court: Do you need these records you have just offered? Do you need these records for the questions?

Mr. Hallinan: No, but if they are going to be occupied they will not be able to pay attention.

The Court: Are you going to hold us up?

Mr. Rosenblum: No. I will be waiting for the minutes anyway so I can know what the lady said.

By Mr. Hallinan:

Q. While you were at the bank, did Mr. Miller, (468) as president of the bank, have access to the bond redemption forms in their blank form? A. Yes, he did.

Q. Did he have access to the bond redemption forms once they became a permanent record of the bank? A. Yes.

Q. Did he also, as president, have access to the bond register? A. Yes, he did.

Q. Did he also, as president, have access to the bonds with all their notations on them before they were sent to the Federal Reserve Bank for collection? A. Yes, he did.

Q. Now, did you ever discuss from the date of the cashing of any Chernoff bonds that you cashed, while

you were at the bank or any time thereafter, the cashing of those Chernoff bonds with Mr. Miller? A. No, I did not.

Q. Specifically I ask you, did Mr. Miller ever request from you to see the particular redemption forms which you have identified? A. No, he did not.

Q. Did he ver request to see from you the bond registers? (469) A. No, he did not.

Q. Did anyone at the bank question you regarding the cashing of these bonds? A. No, they did not.

Q. Did anyone from the law firm of Dorf & Levy ever examine you with respect to the cashing of these Chernoff bonds? A. No, they did not.

Q. In that I include Mr. Dorf. Did he examine you? A. No, he did not.

Q. Did Mr. Levy examine you? A. No.

Q. Did a man by the name of Mr. Weiss examine you? A. No.

Mr. Hallinan: You may inquire.

The defendant has no objection to the documents.

The Court: Received.

(Government's Exhibits 13 to 18, inclusive, for identification received in evidence.)

Cross-examination by Mr. Rosenblum:

Q. Miss Graef, will you tell us, please, how long after the last date or for how long a time after the last date of the cashing of the Chernoff bonds did (470) you leave the bank? A. The bond was cashed February '50 and I left in February '50.

Q. That is— A. I can't give you a specific date. I can give you the month. That is all I can do.

Q. That is the approximate time? A. Yes.

Q. It would be shortly after the last of the Chernoff

bonds was cashed that you left; is that right? A. Yes, that's right.

Q. In particular, let us say during the month of July, 1950, you definitely were not at the bank? A. That's right, yes.

Q. So that unless you were contacted at another place for examination, you would not know whether there was or was not any investigation at the bank? A. I was contacted.

Q. In 1950? A. I believe it was that summer, yes, that the FBI men came to the house.

Q. And about when was that? A. It was during the summer, I believe.

(471) Q. During the summer of 1950? A. Yes.

Q. Is that right? A. I think so.

Q. And was that the time when a man by the name of Sershen came down to see you? A. That is correct, yes.

Q. Was he alone or was he with another agent? A. He was alone.

Q. Between the end of February and that date in July that I brought to your attention, you were not at the bank, is that correct? A. That is correct, yes.

Q. Now, when you said before that the redemption forms were available to Mr. Miller—do you remember that? A. Yes.

Q. Were they available to you? A. Yes.

Q. Were they available to the other tellers? A. By coming to my window, yes.

Q. Were they available to the vice-president of the bank? A. Yes, they would be available.

Q. What was his name? (472) A. I can't think of his name.

Q. Well, whatever the name was, the redemption forms were available to the vice-president, is that so? A. Yes.

Q. Were they available to the cashier? A. Yes, they would be.

Q. Do you recall what his name was? A. The cashier, it may have been Mr. Brennan at that time or it may have been Mr. Littlefield.

Q. Mr. Littlefield? A. Or Mr. Brennan.

Q. Did you know Mr. Littlefield? A. Yes, he worked at the bank.

Q. At that time was he an officer? A. I believe he left about that time. I believe he left before then.

Q. I can't hear you. A. I believe he left before then. He was cashier at one time.

Q. And the cashier is an officer? A. Yes.

Q. Isn't that right? A. That is right.

Q. Can you tell us what the name of the manager (473) was? A. Oh, well, perhaps Mr. Littlefield may have been the manager. I know Brennan was one of the officers, too, Mr. Brennan.

Q. Mr. Brennan was one of the officers? A. Yes, he was.

Q. Were these redemption forms available to Mr. Brennan as well as to Mr. Littlefield? A. Yes, they would have been.

Q. Now, who else were these forms available to? A. They would be available to the officers of the bank.

Q. Now, I think you identified——

Mr. Rosenblum: Will you give me the redemption forms, please?

(Mr. Hallinan hands to Mr. Rosenblum.)

Q. Taking them out of order, in the way they are now, is this your handwriting? A. That is my handwriting.

Q. That is on 3-A for identification? A. Yes.

Q. How about 7-A?

Mr. Hallinan: Just a minute, please. Your Honor, I am going to object.

(474) A. No, that isn't my handwriting.

Mr. Hallinan: No. I am going to object now, and I haven't thus far, but we are reaching the territory where I am. I did not examine her as to 7-A. If Mr. Rosenblum wants to examine her as to any other matters——

Mr. Rosenblum: Frankly, I——

Mr. Hallinan: I am not finished, Mr. Rosenblum.

Mr. Rosenblum: I am sorry. Go ahead.

Mr. Hallinan: He may do so if he wants to elicit matter and your Honor will have to rule on it at that particular time. But I want him to do it as I think the Government is entitled to have it done, and that is at the proper time, which is not now, but when the Government has rested the case, your Honor.

Mr. Rosenblum: I don't know what Mr. Hallinan is referring to.

Mr. Hallinan: You have my memo and that has put you on complete notice as to exactly what I mean.

Mr. Rosenblum: This isn't sacred.

The Court: He objected to your going outside of the scope of the direct. In other words, he has not asked any questions on direct about 7. He says that if you want to ask on your own questions about 7, why, you should recall the witness as part of your case.

(475) Mr. Rosenblum: Frankly, I couldn't hear her. May we then adjourn at this time so that I can get her testimony and read it? I don't recall, I couldn't hear her answers.

The Court: All right.

Mr. Rosenblum: We are going to stop anyway.

The Court: We are going to stop at 4:30, unless you can finish with a few questions.

Mr. Rosenblum: No, I couldn't.

The Court: All right. Is there anything more to add now?

We will excuse the jury. Don't discuss the case among yourselves. 10.30 tomorrow morning.

(Jury retired, and the following proceedings took place in their absence.)

Mr. Hallinan: Would your Honor instruct these two witnesses that I have here?

The Court: Yes.

(Two prospective witnesses entered the courtroom.)

The Court: Gentlemen, I am going to have to ask you to come back tomorrow. I have every hope that you will be reached tomorrow, as far as we can see. In other words, we have had a long witness and there was no way of telling when he would end. Now things (476) should move along a lot faster.

The other thing, what it really comes down to is, if there is any real significance to the Government or to the defendant in having the examination conducted in that particular order, I think you are entitled to it. But, if it doesn't make much difference, why, I would try to clean up the witnesses testimony while they are here to avoid bringing them back, which is more for the convenience of the witness than anything else, but if one of the parties will be seriously put at a disadvantage that way, I believe the witnesses convenience would have to suffer.

Mr. Hallinan: Yes.

The Court: If we get to that point and it does make a difference, why, I think you are probably right. But I wouldn't do it unnecessarily.

Mr. Hallinan: No. I have found from past experience, your Honor, that it has to be done promptly and it has to be done at the first opportunity with

respect to any testimony, otherwise it is out the window, and you have the Government's case and the defendant's case going in as part of the Government's case, and the jury gets a picture that is this way and that way. (477) I think we are entitled to have our case clearly before the jury and then they can put theirs.

Mr. Rosenblum: I don't, really, frankly, understand why he is taking the position at this time in connection with 7-A. Maybe there is something I don't know.

The Court: He figures he has to take it sooner or later and he would just as soon take it at the first opportunity.

Mr. Rosenblum: 7-A?

The Court: He didn't ask about 7-A. He asked about five exhibits. 7-A wasn't one. If you want to question her about 7-A you can recall her as your witness after he has rested.

Mr. Rosenblum: I was going to take her through all of them. That is what I was going to do.

Mr. Hallinan: That is precisely what I wanted to avoid.

Mr. Rosenblum: I didn't get any significance, any intention she was going to make in connection with 7-A. I think he brought her attention to those that she identified, that she knew.

The Court: Unless you see some reason—his rule is the strict one, and unless you see some reason (478) for not following it, why, say so, because he believes, and I am not one, I not having been through his case, I am not the one to treat it lightly, and I realize that a case can have complexities, it can get scrambled if you throw too many things in at the same time. I will go along with him unless you, as you think it over——

*William T. Heffelfinger—for Government—Direct*

Mr. Rosenblum: I was going to get the identification, whose handwriting it was.

Mr. Hallinan: I am going to have other witnesses, and I didn't want to get it all——

Mr. Rosenblum: Is that the only objection?

Mr. Hallinan: No. I have the general standing objection from past experience—I would like to get my case before the jury in a clear picture.

The Court: All right. We will see how it works out.

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(479)

New York, October 23, 1956;
10.30 o'clock a. m.

Trial resumed.

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WILLIAM T. HEFFELFINGER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Heffelfinger, by whom are you employed? A. United States Treasury Department.

Q. And what is your official position with the Treasury Department? A. Fiscal Assistant Secretary.

Q. How long have you been with the Treasury Department? A. 39 years.

Q. Now did there come a time, Mr. Heffelfinger, when the Treasury Department became interested in the cashing of certain savings bonds at the Pennsylvania Exchange Bank in New ~~York~~ City? A. Yes.

Q. Now do you have the file of the Treasury Department relating to that whatter with you? A. I do.

(483) Q. Can you tell the Court and jury, please, when the Treasury Department first communicated with the

bank? A. I think that was in 1950; we first notified the bank that there was a possibility that they were liable for erroneously paying certain bonds issued in the name of Chernoff.

Q. Can you give us the exact date? A. July 19, 1950.

Q. And how was the bank informed? Was that by letter? A. By letter, yes.

Q. And to whom was the letter addressed? A. It was addressed to Mr. J. W. Miller, President, Pennsylvania Exchange Bank, 566 Eighth Avenue, New York 18, New York.

Q. All right. Do you have in that file a letter dated December 26, 1951, from Mr. Miller to a Mr. Bartelt in the Treasury Department? A. I have.

Q. Could you detach that letter? Can you tell us, first of all, when that letter was received? A. The letter is dated December 26, 1951. From the stamp, mail time stamp on the back of the (484) letter, it was received in the office of the Fiscal Assistant Secretary of the Treasury Department on December 27, 5.14 p. m.

Q. What city was it received in? A. In Washington, D. C.

Q. Are there any other stamps on the back indicating it went to other places? A. After receipt in the office of the Fiscal Assistant Secretary it is then sent in the Treasury to the Commissioner of the Public Debt, who has supervision over this activity. It goes from that office in Washington to their office in Chicago, where all the savings bonds work is performed.

It shows here that it was received in Chicago in the office of the Deputy Commissioner in charge in the Chicago office on January 2, 1952, at 11.56 a. m.

And from his office it shows it went then to the Operating Division, Division of Loans and Currency, the Chicago branch of that division, and was received there on January

3, 1952, at 11.30 a. m. That is the division that was responsible for developing the case.

Q. Now do you have in that file a letter dated April 4, 1952, from Mr. Miller to Mr. Peyton of the (485) Treasury Department? A. Yes, I do.

Q. Can you tell us where and when that letter was received by the Treasury Department? A. This letter is dated April 4, 1952. It is addressed to Treasury Department, Fiscal Service, Chicago 54, Illinois, attention Mr. Charles D. Peyton, Deputy Commissioner in charge. It is shown by the time stamp on the reverse copy of the letter that it was received in Chicago in the Division of Loans and Currency or in the Deputy Commissioner's office, that is Mr. Peyton, on April 9, 1952, at 3.59 p. m.

From there it was sent to the Division of Loans and Currency and received there on April 11 at 8.50 a. m. It was also sent, before receiving it in the division it went to their mail room on April 10, 1952, 11.34 a. m.

Q. Do you have in your file a letter dated June 4, 1952, from Dorf & Levy to Mr. Bartelt of the Treasury Department? A. Yes. This is a letter dated June 4, 1952 from Dorf & Levy addressed to Mr. E. F. Bartelt, my predecessor and Fiscal Assistant Secretary of the Treasury. It was received in our office, it has (486) a date stamp here of June 9, 1952, and 9.33 a. m.

Mr. Hallinan: If your Honor please, I shall now make available to Mr. Rosenblum the letters that have just been referred to, the photostatic copies. If he is agreeable I would rather not have those marked so that Mr. Heffelfinger may take them back to Washington with the file. I will let him compare these photostatic copies we have with them.

May we have this marked 22?

(Marked Government's Exhibit 22 for identification.)

Mr. Hallinan: They are just a little out of order, your Honor, because this witness comes out of order.

(Government's Exhibits 23 and 24 marked for identification.)

(487) Q. Mr. Heffelfinger, in connection with the Treasury Department's investigation, did you have occasion to make personal contact with Mr. Miller here in the City of New York? A. Yes, I did.

Q. First of all, do you know if anyone other than yourself from Washington made personal contact with Mr. Miller here in New York? A. No one in the Fiscal Service of the Treasury, to my knowledge.

Q. Can you tell us when that was? A. That was on April 14, 1952.

Q. How did you contact Mr. Miller originally on that date. A. Well, I had come to New York on a number of matters, and being up here I brought this file along with me to talk to Mr. Miller about the case because the bank had denied liability to the Treasury. As we call it, they had refused to reimburse the Treasury for the amount of these bonds which they had erroneously paid. Since I was in New York, I thought in a personal conversation with Mr. Miller we could present our side of the story.

Mr. Rosenblum: A little louder.

(488) A. (Continuing) We could present our side of the story to Mr. Miller and show him we were in all fairness taking into account everything we could take into account that supported the bank's position.

So from the hotel early that morning I called the bank

and asked to talk to Mr. Miller. I talked with him and told him I was in New York and would like to come over and discuss this case with him. He said, "Come right over."

I took a taxicab and I assume I was there within ten minutes, I believe.

Q. And did you see Mr. Miller at the bank? A. I was introduced to Mr. Miller at the bank, yes.

Q. And did you have a conversation with him? A. Yes.

Q. Will you tell the Court and jury, please, everything that was said by you and by Mr. Miller during the course of that conversation? A. I told Mr. Miller we were concerned with the denial by his bank of liability for these erroneously paid bonds, that we had no basis under our law and regulations to relieve the bank.

I pointed out that the law which the bank acted (489) under makes the bank liable for the payment unless the Secretary of the Treasury can find a basis for holding that the bank was not negligent in making the payment, that we could not find such a basis that the bank was not negligent, and that our only recourse was to ask for reimbursement from the bank.

I pointed out that we could obtain reimbursement in a number of ways. We could withhold an amount equivalent to this amount due from the bank from subsequent payments due to the bank from the Treasury, the set-off procedure; we could sue the bank; we could revoke the bank's authority to act as a paying agent or issuing agent for savings bonds; we could withdraw a substantial Treasury balance which we then had in the bank, some $3,000,000, on the theory that if a bank failed to carry out its obligations under one regulation we could have no assurance that the bank would carry out his obligations under these other regulations they were operating under as issuing or paying agents or as depositary.

I told him we were reluctant to do that, it was not our

policy to take punitive action against banks, it was our policy to settle with fairness to the banks and the Treasury. We could not operate the Treasury, I pointed out, without the cooperation of the banks.

Mr. Miller said he thought it was a very (490) harsh attitude of the Treasury, that he felt that his bank had paid the bonds properly.

He said they had paid them to a person who had been introduced to them as Chernoff, the owner of the bonds, and on that basis and in the light of the very small fee that the bank was getting for this service to the Treasury, he didn't think that the bank should be held liable.

He also said that he had taken the matter up with the bonding company and had sent the Treasury a letter but that letter was addressed to our Chicago office and had crossed between the time he sent it and the time I came to New York, so I didn't have the benefit of that letter in the file at the time.

I think Mr. Miller also said that he had an appointment to see his bonding company in the next few days, that he was going to discuss the matter further and at that time see that we got a check in reimbursement of the amount due the Treasury.

I asked him if he would expedite that because we like to make these cases as current as we can, and then I left him.

Q. Is that all of your recollection on this conversation? (491) A. That is the recollection which I refreshed my mind by memorandum I made at the time, which is in this file here.

Q. Do you recall anything in that conversation about Mr. Miller stating that secret service agents had informed him that the bonds were properly cashed? A. That is true, he did make that statement. I pointed out to Mr. Miller that I was confident the secret service agents had made no statement, it was contrary to their rules, that I

was sure that they would never make a statement to that effect because it was not their policy of business to make that determination, it was the business of the Secretary's office, of which we were his agent, and that the secret service agents are employed solely to develop the facts in the case and they had no authority and I was sure they had made no attempt to tell a bank whether they were liable or not liable for payment.

Mr. Hallinan: You may inquire.

The Court: Just a second, Mr. Hallinan. Have you got those exhibits identified by this witness so we know which is which?

Mr. Hallinan: Yes.

The Court: I frankly do not. Has he (492) said that those particular documents you have in your hand are photostats of the letters in his file?

Mr. Hallinan: No. I will have him compare them. Mr. Rosenblum has compared them.

The Court: I see. Will you tell me, then, what they are?

Mr. Hallinan: 22 is the letter addressed to Mr. E. F. Bartelt, Fiscal Assistant Secretary, Treasury Department, Fiscal Service, Washington, D. C., from James W.——

The Court: Just give me the date.

Mr. Hallinan: December 26, 1951.

Do you want just the date on the remaining two?

The Court: Yes.

Mr. Hallinan: Exhibit 23 is the letter of April 4, 1952, and Exhibit 24 is the letter dated June 4, 1952.

The Court: All right. The other one you referred to has not been identified. You referred to a letter of July 19, 1950.

Mr. Hallinan: No.

*William T. Heffelfinger—for Government—Cross*

Cross-examination by Mr. Rosenblum:

Q. Mr. Heffelfinger, you say that you said to Mr. Miller that a Treasury agent had no authority to (493) make a statement to the effect that in his opinion the bank was not liable. A. That's right.

Q. The Treasury Agent was making an investigation, was he not, to determine those facts which would establish two things, if possible: Who was responsible for the passing of bonds which were illegal in the sense that they had been forged, and the other was the question as to whether or not the bank acted negligently? A. No. The secret service agent——

Q. I mean the secret service agent. A. He does not make that determination. He makes an investigation of all the facts and circumstances surrounding the payment. He makes a report of that investigation, which comes to the Fiscal Service, an arm of the Secretary of the Treasury. That report is analyzed in our operations. We determine from those facts whether under our regulations the bank is to be held liable for the payment or is to be relieved of that liability.

Q. Do you want us to understand, Mr. Heffelfinger, that the secret service agent was not in a position to have an opinion on a matter that he was taking care of?

Mr. Hallinan: I will object to this. That is not what he said.

(494) The Court: I will sustain the objection as to form.

Q. You said, did you not, Mr. Heffelfinger, that the agent had no authority to say something? A. That he had no authority, and I was sure he would not have said it.

Q. How do you know? A. Because knowing from ex-

perience the way the secret service agents operate, I am sure——

Q. You cannot swear to the fact, can you, as to whether he did or did not say it? A. I can't swear to the fact, no.

Q. That is the fact, isn't it, that you cannot swear to it? A. I expressed my opinion at the time to Mr. Miller.

Q. That was your opinion, wasn't it? A. That's right.

Q. But you still cannot tell this jury whether or not the agent did or did not express an opinion? A. No.

Q. Isn't that the fact? A. That is true.

Q. But the facts upon which you say someone in your (495) department was to make a determination as to whether or not the bank was negligent, those facts were gathered by Mr. Sershen? A. That is true.

Q. And he knew, did he not, at least under your instructions and within the scope of his work, that he was doing just that, to get those facts which would enable someone to come to a conclusion as to whether or not the bank should or should not be held liable for this alleged passing of the bonds, cashing of the bonds, which was claimed to be negligent according to the first letter sent by the Treasury Department? A. That is the duty of the secret service agent, yes.

Q. So he certainly had everything before him that he needed to have his own opinion?

Mr. Hallinan: I will object to this. He cannot certainly testify to the operation of another man's mind. I will object to the form of the question.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. What was there that Mr. Sershen did not have that your Department did have when your Department made this determination as to whether or not the bank was negligent? (496) A. He didn't have the responsibility to make that determination.

Q. What facts outside of the responsibility? A. I don't know what facts he may have or did not have. He had the facts that he developed from his investigation.

Q. You know that he had at least those facts that he gave your Department? A. I assume he did, yes.

Q. Isn't that so; is that right? A. He reported certain facts to the Treasury.

Q. And you don't know whether he did have additional facts? A. I don't know what he had.

Q. You could not tell, could you? A. But I have sufficient confidence in the secret service organization to know that they report what they feel are pertinent facts to us.

Q. That's right, what they believe is pertinent, but you do not know whether he had other facts which he thought at the time may not have been pertinent? A. In my judgment, I am sure he did not, but whether he did or not, I don't know.

(497) Q. Well, you say you are sure he didn't. What do you base that on? A. From my knowledge of our operations.

Q. Then do you now tell this jury and the Court that you are satisfied he had no other pertinent, no other facts? A. I have confidence that he reported all the facts that he had that would be pertinent to this case.

Q. Whether he had additional facts, whether he considered them pertinent or not, you don't know; isn't that so? A. I don't know, no, I don't know what he had, except from his report.

Q. That is right. Those are the facts which came before your department? A. That is right.

Q. And when Mr. Miller said to you that the agent told him that the bank wasn't liable, did you say to him then he had no authority to do it, he had no right to do it, and that all that you have told the jury now? A. If

I may refresh my mind, I can more or less tell you what I said to Mr. Miller at the time.

Q. Please do. A. Reading from a memorandum that I wrote (498) immediately on my return to Washington as a result of my visit with Mr. Miller: I showed Mr. Miller the law under which the Treasury operates the program and pointed out that on the basis of the information developed by Treasury investigators we could not find a basis to relieve his bank. He said one of the Treasury investigators had told him, the bank, that the identification they used was satisfactory and that the bank would not be liable. I replied that the investigators had no authority to make any such statement, that their duty was to develop the facts and apprehend the forgers if possible, and that we did not know of any cases where they had failed to carry out instructions, and pointed out that I could not believe an agent made such statements, that they had specific instructions on the matter.

That is my recollection of our conversation at that time.

Q. Did you tell him that you were surprised that he made a claim that Mr. Sershen said that the bank wasn't liable? A. I replied that the investigators had no authority to make such statements, that their duty was to develop the facts and apprehend the forgers if (499) possible, and that we didn't know of any cases where they had failed to carry out instructions. I pointed out that I could not believe that an agent made such statements, that they had specific instructions on the matter.

That is the gist of my statement to Mr. Miller at the time.

Q. Did you say to Mr. Miller that you were surprised that— A. I didn't say I was surprised. I read exactly what I said.

Q. In other words, the moment you heard the statement that he made to you, you wanted to set him straight and told him that he couldn't have made such a statement? A. I did.

Q. That was the first time you had heard such a statement, isn't it? A. How do you mean?

Q. The first time that you ever heard Mr. Miller or anyone in Mr. Miller's benalf assert the claim which he made about what the agent, he claimed, told him? Without looking at any data, do you have a recollection as to whether that is or isn't the fact, Mr. (500) Heffelfinger? A. I don't know—that is the first time Mr. Miller made that statement to me, yes.

Q. So the first time that you knew, without looking at any data for the moment, please, is that the first time that you heard such an assertion? A. I believe that Mr. Miller in one of his earlier letters had written to the Treasury to that effect.

Q. Right. You knew that, didn't you? A. It was in the file at the time, yes.

Q. Did you know it at the time you talked to Mr. Miller? A. I probably did, yes, because I was familiar with the file when I talked to Mr. Miller.

Q. You knew that to be the fact? A. Yes.

Q. Show me in the letter you wrote back to Mr. Miller saying that no agent had a right to tell you that, immediately upon receipt of the letter in which he informed the Department that Mr. Sershen told him or that the agent told him that in his opinion there was no liability.

Mr. Hallinan: I object to the question——

(501) The Court: If you have any letter show it to him. If you know.

The Witness: I don't know. I will have to look at the record, your Honor.

A. The Treasury wrote to the bank on November 16, 1951 making demand for a reimbursement. The bank acknowledged receipt of that demand on December 26, 1951, in which the following statement is included: "At the time the investigation was made by your Department we were informed that the bonds were properly cashed in accordance with the procedure laid down in your official circular and consequently no claim could be made against us. We note these several matters listed in the second paragraph of your letter as being disclosed by your investigators but call your attention to the fact that item 2 is incorrect according to information that we have and which was given to and confirmed by your investigators."

It was on the basis of that denial by the bank of liability that I took occasion to visit the bank and talk personally to Mr. Miller.

Q. Now permit me to bring your attention again——

The Court: While they are looking for some-
(502) thing: You spoke of specific instructions to the Secret Service agents. What are those instructions?

The Witness: Those instructions come as part of their organization and duties. We in the Fiscal Service don't give instructions to the Secret Service agent.

The Court: What are their instructions, do you know?

The Witness: To make the investigation, sir. We have cautioned the agents from time to time that they are not to make any comment on the liability or non-liability of the bank.

Q. After the letter which you just read, I think it was December 26, 1951, do you know whether or not you or someone in your department contacted the agents that

made the investigation to determine whether there was any basis for the claim by Mr. Miller to the effect that in the opinion of one of the agents there was no liability on the part of the bank? A. Not that I can recall, because we had in our possession before that time the report of the agents, and nowhere in their report did they point out that they made such a statement to Mr. Miller. As a matter (503) of fact, their report would tend to indicate to the contrary.

Q. But you were put on notice, were you not, on December 26, 1951, that a particular claim was made and that was that an agent inform the bank that the bank was not liable? You received that notice in that letter of December 26, 1951? A. That is true.

Q. Did you take any step to determine whether or not that statement was true or not by contacting the agents who made the investigation? A. No. We felt there was no basis for making any inquiry

Q. The fact is you didn't? A. That is right

Q. My question — A. Because we had the report——

Q. My question was did you or did you not? A. We took it that the statement was untrue.

Q. You took it that the statement was untrue? A. That is right.

Q. You knew it was a rather serious statement that the bank was making; am I right? A. Well, it was a statement that what state- (504) ment the bank is apt to make we evaluated. We had the agent's report before us.

Q. But you didn't contact the agent to ask him whether or not in fact, in addition to what he reported he was told by Mr. Miller — A. No.

Q. he told Mr. Miller that in his opinion the bank wasn't liable? A. We didn't make any inquiry.

Q. You knew that was a rather important statement, did you not? A. No, it wasn't important because the

Secret Service agent has no authority to make such a statement.

Q. I think you agreed with me before that even if he didn't have any authority, you don't know whether he made it or not? A. That is right, I don't know whether he made it.

Q. Isn't that right? A. Whether he made it or not had no bearing on the case, in our opinion.

Q. That was your opinion as to what bearing it had. But as far as the fact, you don't know whether he made it or he didn't make it? (505) A. No, I assume he will be available to say whether he did or didn't make it.

Q. That is your assumption about what he will say or won't say. I am asking you to tell us about what you know. A. No, I don't know whether he made it or didn't make it, sir.

Q. Right. And isn't it a fact that the closest you ever got to denying it was by your saying in your letter of February 5th that, "We are not aware of the information given by our investigating agent to you or officials of your bank"? That is the closest you got? A. That is right.

Q. Isn't that a fact? You are shaking your head I think. A. If you are quoting from the letter——

Q. Isn't that the fact? A. Yes.

Q. Is that right? A. Probably so.

Q. Isn't it further the fact——

The Court: Wait. I am a little bit mixed up. I didn't hear the answer.

(506) A. I said it is probably so, sir. There is nothing in the record to show that we made any specific inquiry whether the agent did or did not.

Q. The fact is, however, the question I put to you, isn't

it the fact that the closest you got to taking a position in connection with Mr. Miller's claim was that you wrote in your letter of February 5, 1952, "We are not aware of the information given by our investigating agent to you or officials of your bank"?

Mr. Hallinan: I object to the form of the question: it calls for a conclusion.

The Court: Sustained as to form.

Q. Did you, in addition to what is contained in the letter of February 5, 1952, ever write a letter to Mr. Miller telling him that his statement was not the fact? A. I have the letter of February 5, 1952. Let me read what we told Mr. Miller at that time.

Mr. Rosenblum: May we have that letter marked, please?

The Witness: May I have the privilege of filing a certified copy of this for the record?

The Court: Yes. You can have a copy (507) substituted.

Mr. Rosenblum: We will substitute a photostat in its place.

(Defendant's Exhibit A marked for identification.)

The Witness: May I read the letter, sir?

The Court: Just a second.

Q. In particular, will you point out if there is anything in that letter whereby you unequivocally said to Mr. Miller, "That statement is not the fact"?

Mr. Hallinan: I object to the form of this question, "unequivocally" "closest," any words that call for a conclusion.

*William T. Heffelfinger—for Government—Cross*

Mr. Rosenblum: I will leave out the word "unequivocally."

Q. Can you point out any place in the letter where you say "The statement you made is not the fact," "Mr. Sershen denies," or anything to that effect?

The Court: We have the letter before us. Isn't that what you want?

A. This is addressed to Mr. Miller on February 5, 1952, signed by Mr. E. F. Bartelt, Fiscal Assistant Secretary of the Treasury.

(508) "Dear Mr. Miller: This is in reply to your letter dated December 26, 1951, regarding the payment by your bank of savings bonds bearing the names of various members of the Nat Chernoff family, at the total redemption value of $6,684.50.

"A careful review of the case has been made and full consideration given to the comments in your letter. We are not aware of the information given by our investigating agent to you or officials of your bank. However, I wish to point out that the statute under which relief may be granted requires the Secretary of the Treasury to determine that the loss resulted without fault or negligence of the paying agent. The circumstances in this case do not justify such a determination.

"The investigation established conclusively that these bonds were paid by tellers of your bank upon instructions from you; that the proceeds of the bonds were handed by the tellers to the bank guard who delivered them to you; and that in at least two instances you personally handed the money to Mr. Mishel. As to the circumstances surrounding these payments, you stated to our investigating agent that Mr. Mishel brought with him another man who remained at a distance, that you did not meet or observe

this individual (509) and did not attempt to identify him as the registered owner of the bonds Mr. Mishel handed you and asked to have paid. Neither your statement or the investigation generally disclosed that any attempt was made at any time to identify anyone connected with the payment of these bonds as registered owners or co-owners. I wish to make it clear that payment in this manner is not in accordance with procedure laid down in Department Circulars and memorandum of instructions and letters to paying agents, but is clearly a violation of all regulations governing the payment of savings bonds

"Accordingly, there is no basis for granting your bank relief from its liability for the loss of this case. Therefore, I must ask that reimbursement in the amount of $6,684.50 be made as previously requested."

In other words we denied that the statements alleged to have been made by the investigators had any bearing upon the bank's liability.

Q. That is the contention of your department? A. That is right.

Q. As set forth in the letter? A. Yes.

Q. My question was a simple one: Do you have in that letter or in any other letter any place where (510) you specifically say you checked with the agent and the agent denies the statement which you attribute to him? A. Not in this case, no.

Q. Not in this case. Now, that is another fact, Mr. Heffelfinger—you say that starting with July, 1950, the Government took the position that the bank was negligent? A. Not in July, 1950, no. We did not make that determination until 1951.

Q. Excuse me. I got the date wrong. I will withdraw that and change it. I have two dates mixed.

Tell us whether or not by your letter of July 19, 1950, the bank was informed of the possibility of an erroneous payment having been made in connection with the cashing

of savings bonds? A. That is true; we notified the bank that he had information which might lead to that conclusion. At that time we didn't know.

Q. That is right. And you also advised him that an agent would call and make an investigation? A. Would call, that is right.

Q. And can you tell us whether or not that agent was alone or with another agent—I withdraw that.

(511) Q. Can you tell us whether or not the investigation was made by one or two agents?

Mr. Hallinan: I object to this, your Honor, on the following grounds: I have developed from this witness three areas. The letter written on July 19, 1950, informing the bank an investigation would be made. No. 2, the receipt of these three letters. No. 3, the conversation with Mr. Miller.

Now, I do not wish to call upon the Court at this time to restrict the cross-examination in this sense that they would have to call this man at a later time, because I think this is a case where we can accommodate the convenience. But I want the record to be unmistakably clear that inquiries into other matters this witness becomes the witness of Mr. Rosenblum and that he should conduct himself accordingly with all the rules of evidence that would pertain to a witness of his own.

Mr. Rosenblum: May I be heard, if your Honor please?

The Court: Well, I don't think we have to labor the point. I will deal with the problems as they arise, question by question.

Mr. Rosenblum: Excepting I urge this as one matter. This matter this witness is being examined (512) about, because I go into a particular time

other than the time that Mr. Hallinan questioned him about——

The Court: I think we will get along faster if you go ahead and put your questions and from time to time decide whether there is any significance to the difference in position or not.

Mr. Hallinan: I am asking your Honor to determine whether or not the inquiry——

The Court: I don't make blanket determinations, as by and large I think they are a waste of time; you spend more time making blanket determinations than you do in applying them. Let us go ahead, and as the questions arise I will deal with them. As far as the form questions are concerned, I will take into account whether it is new matter or cross as to old and in any other way in which it becomes significant, but if doesn't become significant I am unable to take it into account. So let us go ahead.

Q. Can you tell us whether or not thereafter an agent by the name of Sershen made the investigation referred to in your letter of July 19, 1950? A. I don't know the name of the agent or agents that made the investigation, myself. The record may show that.

(513) Q. You have no knowledge of this, as to the name? A. Not on this case. I assume it is in the record here. I can find it.

Q. Do you know an investigation was made? A. Yes.

Q. Can you tell us whether or not from whatever means you can get the information an agent came to the Pennsylvania Exchange Bank in August, 1950? A. We were furnished with a report by agents of the secret service.

Q. What names? A. Covering the period from July 24, 1954, to October 12, 1950, in this Chernoff bond case, investigation made by special

(515) Q. Just one moment, Mr. Heffelfinger. You are reading something not in evidence. I asked you whether you can determine whether an agent or agents went to the Pennsylvania Exchange Bank.

Can you answer that yes or no from a study of your file? A. Yes, two agents.

Q. Can you give us their names? A. Special Agents G. J. Sershen, S-e-r-s-h-e-n, and E. F. Sweeney.

Q. Can you tell us whether or not you can give us the time during which this investigation took place, the time covered, the period? A. July 24, 1950, to October 12, 1950. They interviewed Mr. Miller a number of times.

Q. You cannot read from something that is not in evidence. You cannot say what someone else did unless you have personal knowledge.

Mr. Hallinan: I am sorry. I think Mr. Rosenblum asked if there was anything in the record that reflects that.

Mr. Rosenblum: I asked him to give us the names and dates. I am going to be as technical as you are, if you want to be technical.

(516) Mr. Hallinan: He asked him if there is anything in the record that reflects that, and he has to refer to the record to see.

The Court: Just so that we do not get mixed up here, if you want to make any objection to the hearsay nature of the testimony, you may do so. If you do not do so, I am going to let him go. I do not think he asked for the content. He asked for certain particulars.

Mr. Hallinan: I am sorry. I misunderstood.

The Court: I may be wrong, but that is my recollection. He then went back and checked the record, which he obviously does not have any personal knowledge of, and on the basis of what he finds in

the record he gave the information that Mr. Rosenblum asked.

You could have stopped it by objection if you wanted to.

Mr. Hallinan: No.

By Mr. Rosenblum:

Q. Can you tell us whether or not it isn't the fact that more than a year elapsed after the investigation was completed before your department asserted the claim that the bank was liable?

(517) Mr. Hallinan: I will object to this as leading, your Honor.

The Court: I will sustain it.

Mr. Rosenblum: Exception.

Q. Will you tell us, if you can, how much time elapsed between the completion of the investigation by the agents and the time when your department notified the bank that in their opinion the bank was liable?

Mr. Hallinan: I will object to this on the ground of relevancy, if your Honor please.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception. May I be heard on the question of relevance?

The Court: Yes. Come up. As a matter of fact, we will take our mid-morning recess now.

(Jury leaves courtroom.)

Mr. Perry: Shall I start?

The Court: Sure.

Mr. Perry: Your Honor, the relevance——

The Court: Do you want the witness on the stand or off? Mr. Heffelfinger, we are going to

have a ten-minute recess. So you can stay there or leave, as you see fit.

(518) Mr. Perry: On the question of relevancy, your Honor, the documents we have—at least we have been provided photostatic copies of certain documents—the documents we have indicate that the Treasury Department notified the bank of a possibility of a claim in July of 1950, and the very next communication from the Treasury Department was a letter of November 1951, which means a lapse of time—I don't know—of approximately 15 or 16 months.

Now, in between that time you did have an investigation that ran from July to October, so that as of the last time when the agents were in the bank, which was October of 1950, and as of the first indication from the Treasury Department that they were rejecting the bank's claim that the bonds were cashed properly about 13 months elapsed.

Now, your Honor, as we have elicited from the witness, as soon as the Government sent its letter of November 1951 to the defendant claiming that the bank should pay, the defendant responded in December of 1951, telling him that in effect—I don't have the letter before me—in effect they were led to believe by the agent that there was nothing improper about the (519) cashing.

Now, we submit the relevancy of that, your Honor, would show from the lapse of time from the first letter sent by the Government in July of 1950 and from the lapse of time after the Government's investigation in October of 1950 that if the defendant had been told by Sershen that the bank was in the clear—and that is what he claims and that is what the course of action he has taken in-

dicates—that certainly the lapse of time would be relevant on whether he had a right to believe that when told that by Sershen.

So that when he wrote his letter in December of '51, and that is the first count in the indictment, where he says, "We were informed of that," then the fact of the lapse of time would indicate for the jurors' determination whether or not his statement that Sershen had told him is true.

The Court: You say he would be justified in submitting a false letter in reliance on Sershen's statement?

Mr. Perry: We don't say it is false. I had better get the letter for your Honor.

The letter says, your Honor, second (520) paragraph:

> "At the time the investigation was made by your department we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular . . ."

Now, the importance of this statement, Judge, is in the first count of which this letter is based——

The Court: May I see the letter? I have never seen it.

(Mr. Perry hands document to Court.)

The Court: All right.

Mr. Perry. Keep in mind, your Honor, the first count makes the flat assertion that this defendant made a false statement when they say, in effect, he said the bonds were cashed properly, whereas in truth and fact they were not cashed properly. The letter that was sent shows the defendant saying, "We were informed that the bonds were cashed properly."

So I would respectfully submit this whole first count would stand or fall. There is a legal question which I am leaving aside for a moment, but getting beyond the legal question, the whole count will stand or fall on whether or not the (521) defendant knowingly and wilfully uttered an untrue statement when he said, "We were informed that the bonds were properly cashed."

And I say one of the things that will go to have a prime bearing on that question of whether or not the defendant had a right to rely on what he said Sershen told him is the lapse of time between the Government's actions here.

Mr. Hallinan: If you have concluded, may I be heard before your Honor rules?

The Court: Yes.

Mr. Hallinan: I think that whatever Mr. Miller may have relied upon has nothing to do with the period of time. The purpose of this is quite apparent from Mr. Rosenbium's opening statement.

I think the whole construction they are going to place upon this letter is that it was a mere opinion and it was the Treasury Department's opinion and they were dickering back and forth and there were not flat assertions made.

With respect to the last statement, we are prepared to argue briefly in answer to that. We will show as a fact he was not informed by the Secret Service agent and that this is a very cute (522) way of saying to the Treasury Department, "These bonds were cashed in accordance with your circular."

It is a clever way of saying it, yes, but nonetheless, in effect, a direct statement to that effect. But whatever Mr. Miller may have relied upon I think has nothing to do with a lapse of time.

The Court: I do not see any value is going into the question of lapse of time. As a matter of fact, we all know when we deal with the Government departments they have got a whole lot of problems besides this one, and why the time went by or why it did not go by, which is the really significant thing, I think is—I doubt that even that would be significant, but we get off on the whole question. Mr. Miller can say, if he wants to, what he relied on and why he did things, if he wants to. If his reasoning stands up in the jury's mind, he would have made his point for whatever it is worth, but I do not think we need go beyond that to establish the facts independently as though they had some validity in themselves.

Mr. Perry: Judge, you are putting us at a great disadvantage.

The Court: How?

(523) Mr. Perry: For this reason: The photostats we show you here, your Honor, we got ultimately on order of Judge Ryan in the latter part of September. These are photostats provided to us—no, I guess we got them ourselves; but, in any event, Mr. Hallinan had the file of the bank, Pennsylvania Exchange Bank.

So there are letters in that file, in some instances there are photostats, but, in any event, we got photostats of what is in the file. We do not know what is in the Government file. All we have in the file is that on November 21, 1951, the Government sent a letter of which we now have a copy. We would certainly like to ascertain from this witness whether there was anything before November 1951, because all we know is November 1951. If there were one before then, we should have it out and we should know it. If there were not one

before, which is what we believe to be the fact, then we should be entitled to make whatever argument there is to the jury on that matter. Your Honor takes the position that the Government acts slowly and therefore——

The Court: I am just stating my real (524) position is I am not going to get into a speculation of why 15 months went by before the letter came in. I have other issues to try.

Mr. Perry: We are interested in the fact. All we are interested in is the fact.

The Court: That has no materiality.

Mr. Perry: It does have, Judge. I am sorry. I think it does have, your Honor.

The Court: Where?

Mr. Perry: It seems to me, Judge, that Mr. Hallinan said they will prove what the fact is. What he means is he is going to produce Mr. Sershen, who will give certain testimony, and we will produce Mr. Miller, who will give other testimony, and it will be for the jury to determine what the fact is. But, in any event, your Honor, if I were a person who had dealings with the Government and if I say it is the fact, and let us assume it is the fact, that an agent says, "You are in the clear. Don't worry. Everything is all right," and then nothing happens for the longest time, it seems to me that I would certainly be in a position to say, "Heavens, I thought everything was all right," and then when the Government months and months over a year later—says, (525) "You are liable," I say, "Wait a minute. I was told that everything was all right and look, 15 months went by, or 11 months or 13 months went by. I didn't have any reason to feel anything was wrong in what the agent told me."

It goes to the heart of the defense. It goes to the question of whether Miller knowingly and wilfully made a false statement.

The Court: I won't disagree with you and I will sustain Mr. Hallinan's objection, my view being that if in fact—this is a completely different question. If that letter is in fact a false statement of fact, to use Mr. Hallinan's claim, cutely worded, why, it would be no more justified if Mr. Miller knew it was false. The fact that someone had told him he was in the clear would not be a justification for it. In any event, I do not see that the passage of time is of any significance. It is going to get us entangled in explanations on an issue that I do not think is going to help us in resolving the material issues of the case.

Mr. Rosenblum: We don't want to go into the reasons for the delay. We want to establish a certain length of time——

(526) The Court: I do not think you can go into the passage of time without going into the reasons for it, and I do not think either the passage of time or the reasons for it are going to help solve the material issues in this case.

Mr. Rosenblum: We do not intend to go into the reasons, but we intend to prove, if we are entitled to prove, that a certain length of time passed. We are not going to ask this witness as to what occurred during that time or what may or may not have caused the delay.

The Court: I think I understand what you want.

Mr. Perry: May I ask a point of clarification? I am not disputing your Honor's ruling. Are you leaving this open—I think it would be foolish for us to recall this witness during the defense. That we certainly all want to try to avoid.

The Court: The fact whose witness he is has nothing to do with it. It is irrelevant as I see it. As a matter of fact, if Mr. Hallinan had not gone into the question of what the agent said, I am not sure I would have let you go into it at all. But we are in it.

(527) Now, are you people strong enough to go ahead without any further recess now, and I will give you an extra 15 minutes at lunch?

Mr. Rosenblum: I would rather take a few minutes now.

The Court: All right. I will ask you to come back promptly. The jury is ready to come back right now, so take three or four minutes.

Mr. Perry: This might save a little time, your Honor. In this file that we have gotten from the bank there are a number of letters from the Treasury Department.

Now, rather than go through the witness here and at least ask for identification of all of these so we can later use them in the defense if we choose to, how would you feel, Mr. Hallinan, about agreeing that there would be no question as to the fact that the letters bearing the Treasury Department insignia are actual records of the Treasury Department and if we offer them the only question before the Court will be relevancy?

Mr. Hallinan: No question at all.

(Short recess.)

(528) The Court: Bring the jury in.

Mr. Rosenblum: May I note an exception before the jury comes in?

The Court: Sure.

(Jury enters courtroom.)

*William T. Heffelfinger—for Government—Cross*

By Mr. Rosenblum:

Q. Can you tell us whether or not, Mr. Heffelfinger, after the letter which you referred to before on November 16, 1951, whether from that time until some date in August of 1952, when the money was paid back to the Government, whether there was a series of letters exchanged between your department and the Pennsylvania Exchange Bank wherein you contended that they were liable and they repeatedly contended they were not liable?

Mr. Hallinan: I will object to the form of the question, and on relevancy, your Honor.

The Court: I will sustain it as to form.

Mr. Hallinan: I think it is the same point we just argued.

The Court: Well, it may be introductory to something else, so I don't know whether it is.

Mr. Rosenblum: Exception.

Q. Can you tell us whether or not between the (529) date of November 16, 1951 and August 6, 1952, a series of letters were exchanged between your department and the Pennsylvania Exchange Bank? A. There were some letters exchanged, yes.

Q. Can you tell us whether or not in each instance your department insisted that the bank was liable and the bank insisted it was not liable?

Mr. Hallinan: I will object to this, your Honor, on relevancy.

The Court: Sustained. Well, all right, I will sustain the objection. I also think that I would sustain it on—I don't care to go into that kind of characterization of the letters.

*William T. Heffelfinger—for Government—Cross*

Q. Did your department, up to August of 1952, contend that the bank was liable?

Mr. Hallinan: I will object to this, your Honor, on the grounds of relevancy.

The Court: Well, on that ground I will overrule the objection. I think we already have that contention in the record.

Q. Can you answer that question, please? A. Yes. The Treasury's position has always been that the bank was liable.

Q. And was it always the position of the bank (530) up to the present moment that the bank was not liable, so far as you know? A. I think that was the tenor of their objection to make payment to the Treasury.

Q. And you knew, did you not, that the bank at all times had been bonded? A. So it said in its letter to us.

Q. Your department was so informed? A. That's right. The bank informed us that they were taking the matter up with their bonding company and expected the bonding company to make the payment to them.

Q. The bonding company would make the payment to them? A. Yes.

Q. And then they sent the money to you; is that right? A. That's right.

Q. Isn't it the fact that at the very beginning you suggested in your letter, that is, your department, that they should notify their bonding company? A. We put the bank on notice that that is the businesslike way of protecting their rights. We try to take all action we can to protect the rights (531) of a bank.

Q. So if the bank wished to avoid a controversy they could have notified the bonding company?

Mr. Hallinan: Objection.

The Court: Sustained.

Mr. Rosenblum: Exception. No further questions.

The Court: Any further questions?

Mr. Hallinan: No.

The Court: What about that Exhibit A; are you going to get a photostat?

Mr. Rosenblum: May we have a photostat take the place of the exhibit marked for identification?

Mr. Hallinan: They have from our file a photostatic copy of the original. This is a copy in his file. The original is in the Chernoff file which we got from the bank.

Mr. Rosenblum: We do not have a photostat of this letter. We have it as it was before certain notations were made, and all we are asking is if a certain paper has been marked for identification and we do not have an exact copy, a photostat be submitted.

The Court: You make a photostat, Mr. Hallinan, give them a photostat and send the letter (532) back to Mr. Heffelfinger.

Mr. Hallinan: I want to, on behalf of the Government, however, now that Mr. Rosenblum pointed out there are certain notations on this copy, say the witness is here now and I suggested to him, and I think it is proper, I don't want anybody interpreting notations later if this witness can tell us what they are.

The Court: (To witness) Come on back.

Redirect examination by Mr. Hallinan:

Q. If you know, Mr. Heffelfinger, can you tell us what the various notations on the bottom are? A. Yes. The

notations on the bottom show that the letter was originally dictated by one of the clerks in our Chicago office and it was changed by another clerk at that office. It then is initialed through their organization, reviewed by the clerks and officials responsible for this case. They show their approval by initials. It shows it was initialed after a series of letter initials by Peyton, the Deputy Commssioner in Chicago. It then was received in Washington and initialed by a clerk in the office of the Commssioner of the Public Debt. It was then initialed by the Assistant Commissioner (533) of the Public Debt and by the Commissioner of the Public Debt. It was then received in the Office of the Fiscal Assistant Secretary, and I reviewed it and it has my initials here. After that it has a stamp which indicates it was signed by E. F. Bartelt, Fiscal Assistant Secretary, which is the signature on your photostat copy of the original.

Mr. Hallinan: Do you desire a photostatic copy of this letter?

Mr. Rosenblum: Yes, Mr. Hallinan.

(Witness excused.)

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VIRGINIA GRAEF resumed.

Cross examination continued by Mr. Rosenblum:

Q. Miss Graef, tell us, please, how long have you been in the business of being associated with one or more banks? A. Well, I first started for the Pennsylvania Exchange Bank in September of 1947, as I said before, and then in November of 1950 I went to work for Irving Trust.

Q. November— A. Yes.

Q. —of 1950? A. That's right.

(534) Q. You stayed at the Pennsylvania Exchange Bank from—what date did you give? A. September of '47.

Q. —September of '47 to November— A. February of 1950.

Q. February? A. February.

Q. I thought you said November. A. November is when I started with the Irving Trust.

Q. But you were with the Pennsylvania from September 1947— A. Approximately two and a half years.

Q. —to February. Is that near the end of February, do you recall? A. I couldn't give you the exact date of that, no.

Q. And now you have been with the Irving Trust Company? A. Irving Trust Company six years in November.

Q. Six years. So you have been in this business all together about eight and a half years? A. Approximately.

Q. Can you tell us whether your duties in the (535) Irving Trust Company are about the same as they were at the Pennsylvania Exchange Bank? A. No, they are not.

Q. You hold a different type of position? A. Yes, I do.

Q. I think you gave it yesterday, but would you tell us just what you do now? A. Well, I open special checking accounts and I open savings accounts.

Q. I see. I think you testified yesterday that one of your duties, which was especially assigned to you at the Pennsylvania Exchange Bank, was that of cashing bonds? A. That is correct, yes.

Q. And what were your other duties? I am only referring now to the Pennsylvania Exchange Bank. A. Yes. I would cash special checking checks, I would take in deposits, I would post on the special checking ledger.

Q. Post on the what? A. On the special checking ledger.

Q. Anything else? A. That's about all. You asked me other than cashing bonds; is that correct?

(536) Q. Anything other than and in addition to that. You said you were the person who was in charge of— A. The cashing of bonds, that is correct.

Q. The cashing of bonds? A. Yes.

Q. How many different types of bonds did you cash? A. I believe it was the Series E, United States Government Savings Bonds.

Q. Were there no other types? A. Those were the only ones I think I cashed.

Q. Weren't there some bonds referred to as service, Government Service? In other words, I think "service" is in it, Government Service Bonds. A. The only ones I recall are the Series E.

Q. Do you recall whether the bank was cashing any bonds known as something like servicemen's bonds, bonds issued to men in service, men and women in service? A. It's possible.

Q. Did you have an assistant in this work? A. Yes, I did.

Q. What is the name of your assistant? A. Her name was Olga Durham.

(537) Q. D-o-r-a? A. No, I believe it was D-u-r-h-a-m, something like that.

Q. And that was at the Pennsylvania Exchange Bank? A. That's correct, yes.

Q. Can you tell us who your relief was? A. Who my relief was?

Q. Yes, on occasions—was it this lady Olga Durham, D-u-r-h-a-m? A. m. I am not sure of the spelling.

Q. Something that sounds like that? A. That's right.

Q. Was she your relief? A. Yes.

Q. So that on occasions when you went out to lunch she would relieve and take up the post you had until you came back from lunch? A. Yes.

Q. On occasions when you were ill, likewise? A. Yes, that's right.

Q. Can you tell us what the practice was in connection with the cashing of checks?

Mr. Hallinan: I will object to this on the (538) ground that it is outside the sphere of direct examination, and I would request most strenuously at this time that if he wishes to examine on this point she should be called at a later time as his witness.

The Court: I will let him examine. Go ahead.

Q. What procedure did you follow in cashing checks? A. I only passed the special checking checks for people that were known to me.

Q. People what? A. People that were known to me. I didn't handle the commercial accounts.

Q. In those instances, can you tell us when it was necessary to get an officer's approval? A. Well, it wouldn't be. If the person was known to me and they had enough money in the account, it wouldn't be necessary to get an officer's approval.

Q. Do you recall whether or not on occasions you did get approval from one or more of the officers of the bank in connection with the cashing of checks of the type you have referred to? A. No, I don't recall now whether or not I did.

Q. Can you tell us in connection with the cashing (539) of bonds what instructions had you received, if any, prior to that time? A. About what?

Q. About what you should do when you cashed a savings bond. A. Well, if the person were known to me I would just cash it. If he were not known to me, I would send him over to one of the officers to have it approved.

Q. Is that all that you knew about the procedure you were to follow in connection with the cashing of bonds? A. Well, just what is it that you want?

Q. I want to know everything that you knew about what procedure you had to follow in connection with the cashing of bonds. A. Do you want me to tell what the person would have to do to fill out a bond redemption form? Do you want me to go through all that? I don't know what you are looking for.

Q. I want to know what procedure you followed aside from—what did you know about the steps you had to take before you cashed a savings bond? A. If the person were known to me or not known to me?

(540) Q. In both instances. A. All right. If the person were not known to me, I would ask him to go over to one of the officers to have the bond approved. The officer would initial the bond; the person would come back to my window; I would get out a bond chart to determine what amount had to be paid out; I would place a stamp on the face of the bond. The stamp would have the date on it, the name of the bank, the amount paid out, my name. I would hand the person a bond redemption form to sign. That would have the name of the bank on it, the date, the amount paid out, and that was used at the end of the day to help me prove up my cash and later became a permanent bank record.

Where the person was known to me, I would do everything other than sending him over to one of the officers.

Q. Can you tell us whether in any instance if a person was not known to you——

Mr. Rosenblum: I withdraw that.

Q. It was the duty of the teller, was it not, to cash savings bonds? A. It was my duty to cash savings bonds.

Q. You were the one principally in charge of it; (541) is that right? A. That's correct.

Q. And you being the person in charge of it, can you tell us whether or not on an occasion when a person who was not known to you presented identification, you would cash it or not? A. No, I was not authorized to do that.

Q. In other words, you had no instructions as to whether the suggested steps to be taken were of one kind or another in a case where a person was not known to you?

Mr. Hallinan: I will object to the form of the question. I do not quite understand it either.

The Court: Sustained.

The Witness: Would you repeat the question?

The Court: You do not have to answer it.

Q. In other words, then, you say those two steps that you took, one in the case of a known person and the case of an unknown person, that your instructions were that you were to send it to an officer for approval?

Mr. Hallinan: I will object to the form of the question, your Honor.

The Court: Sustained.

(542) Q. Didn't you say in the case of a person known to you you would cash the bond yourself? A. That's correct.

Q. If the person was not known to you, you sent the person to an officer—for what purpose? A. To have the bonds initialed, to have the bonds approved.

Q. Have the bonds initialed? A. Yes.

Q. And to have the bonds approved? A. That is the same thing. By placing his initial, I would know it's all right to cash it.

Q. I think you gave us your duties before and you say you were in the Pennsylvania Exchange Bank for about two and a half years? A. That's right.

Q. Was it a pretty busy little bank? A. It was busy, yes.

Q. Can you tell us whether or not it isn't a fact that each day you handled hundreds of transactions? A. I handled a number of transactions, yes.

Q. Hundreds of transactions, deposits, receipts, cashing? A. Well, I handled a number of them, yes.

(543) Q. You know that the bank had thousands of depositors, don't you? A. Yes.

Q. Were you pretty busy when you were working there? A. Yes.

Q. Did you see a lot of people coming in and out of the bank constantly? A. Yes.

Q. You said you knew a man by the name of Mishel. A. Yes.

Q. Can you tell us whether he was a depositor of the bank at the time you went to work for it?

Mr. Hailinan: I will object to this on the ground it is outside the scope of direct examination, your Honor.

The Court: I will let him ask it.

A. I don't know whether he was a depositor at the time I went to work, but I know he was a depositor of the bank later.

Q. Did you see him coming in and out of the bank constantly? A. Yes.

Q. Many times? A. Many times.

(543a) Q. Sometimes many times in one day? A. Many times in one day, yes.

Q. And did you ever speak with him? A. No, I never did.

Q. What is that? A. No, I never did.

(544) Q. Do you have a recollection of about when you saw him for the first time? A. No, I couldn't answer that.

Q. Do you recall seeing him with various officers from time to time? A. Yes, he was all over.

Q. Also, did you see him with Mr. Miller from time to time? A. Yes, I did.

Q. Is that right? A. Yes.

Q. Do you have a pretty definite recollection as to the times when you saw him with any particular officer?

Mr. Hallinan: I will object to this, your Honor, on the ground that it is outside the scope of direct examination. May we approach the bench, your Honor?

(The following proceedings took place at the bench out of the hearing of the jury.)

Mr. Hallinan: I think the purpose of this area of inquiry is, quite obviously, from what we have had in the trial and including the opening statement that it is a suggestion that other officers may have (545) been the guilty ones in handling——

The Court: I am aware of that possibility and I will watch it. I think he has not gone beyond probing the extent of her recollection and so forth with respect to Mishel. I think he is entitled to have that on cross. She said that she saw Mishel do certain things with Miller. He is entitled to prove the reliability of her recollection in several different ways.

Mr. Rosenblum: I think on direct examination it was brought out that she saw him at Miller's desk.

The Court: We will go ahead. I will watch. If I think that the sole purpose of the questioning is to establish a defense rather than to go to the reliability of the witness, why, I will watch it, and

you watch it and make your objection. But I don't think he has gone that far yet.

Mr. Hallinan: All right.

(The following proceedings took place in the presence of the jury.)

Mr. Rosenblum: Will you read the question, Mr. Stenographer?

(Question read.)

A. Well, I have seen him with other officers, yes.

(546) Q. But you can't fix the time, can you? A. No, I can't fix that in time.

Q. Can you fix all the times or occasions when you saw him with Mr. Miller? A. No.

Q. You say you saw him several times in one day with other officers or with Mr. Miller? A. That is correct.

Q. Is that right? A. Yes.

Q. I think you told us this was a busy bank. Will you tell us whether or not you made it a practice to make the observation to yourself as to when and where Mr. Mishel went at the times he was in the bank? A. No, I just know he came in, I saw him come in.

Q. You saw him coming in; right? A. Yes, I saw him come in.

Q. During the period of time you have covered for us, you saw him with, as you said, various officers, including Mr. Miller? A. That is correct, yes.

Q. Can you give us any specific time when you saw him with Mr. Miller, other than the one you refer to? (547) A. No, I can't give you the specific time.

Q. On the occasion when you cashed the Chernoff bond—let me ask you this: Did you feel there was any impropriety in what you were doing in cashing that bond? A. At the time I didn't think about it.

Q. If you had any feeling about the impropriety you

would have brought it to someone's attention, wouldn't you? A. I don't know if I would.

Q. In other words, you cashed these bonds like you cashed other bonds? A. I cashed them. I was told to cash them, and I cashed them.

Q. As you cashed them on other occasions when you were told to cash them?

Mr. Hallinan: I think she had, but I would like to have the witness allowed to answer the question.

The Court: Read the question.

(Question and answer read.)

Q. You say you were told to cash them. You cashed them; you had approval of an officer, is that right? A. Mr. Kennedy told me to cash them, that Mr. Miller said it was all right to cash them, therefore, (548) I assumed I had Mr. Miller's approval.

Q. Did you have occasions when other officers sent similar word to you in connection with cashing of bonds? A. The bonds were usually approved when they were sent over that way.

Q. Were these bonds approved when they were sent over that way? A. No, they were not.

Q. Do you recall speaking to Mr. Berry, my associate, on July 31, 1956, at the Irving Trust Company? A. Yes, I do.

Q. Do you recall he was accompanied by another man, Sol Sokolsky, another short fellow? A. Yes.

Q. Do you recall whether or not you told him at the time you saw no impropriety in connection with the cashing of those bonds? A. At the time, I didn't, no, I didn't think about it.

Q. What I am asking you now is, at that time did you

see any impropriety in connection with the cashing of the bonds? A. It was unusual.

(549) Q. Now, will you please answer my question?

Mr. Hallinan: I think she answered.

The Court: I will let it stand.

Q. At the time did you feel that you were doing something which was improper? A. I felt the bonds should have been initialed at the time, yes.

Q. You felt the bonds should have been initialed? A. Yes, Mr. Miller should have initialed them.

Q. Did you ask Mr. Kennedy to get the bonds initialed? A. He said it was all right to cash them, that Mr. Miller had approved them. And he didn't go back——

Q. Did you bring to his attention— A. Yes, I did.

Q. (Continuing) —that you would like to have the bonds initialed? A. Yes, I did.

Q. You say that Mr. Kennedy said that Mr. Miller approved it and, therefore, you cashed it? A. That is correct, yes.

Q. Did you make it a practice to ask that every bond be initialed that you cashed? A. No, I didn't.

(550) Q. I am not talking about Mishel's. A. Bonds that were known to me, no.

Q. Outside of bonds not known to you. When persons were not known to you, did you make it a practice in every instance to— A. Where the person was——

Q. (Continuing)—to have the initial put on? A. Where the person was not known to me, yes, I wanted the bonds initialed.

Q. But where you received word, where the person isn't known to you, from an officer, that, to you, was in effect telling you it is all right to pay, isn't it?

Mr. Hallinan: I object to the form of the question, your Honor.

The Court: I will sustain the objection.

Mr. Rosenblum: May we have the bonds, please? May I have a moment, your Honor?

Q. When did you receive instructions as to the procedure you were to follow in connection with the cashing of bonds? A. I suppose when I first started working as a special checking teller.

Q. You say you suppose when you first started. Would that be when you started to work with the bank? (551) A. No, it wouldn't be, because I did not start in as a special checking teller. It was after that.

Q. What did you start as? A. I started work in the loan and discount department.

Q. On what? A. I started in the loan and discount department.

Q. Do you recall about when you were assigned to this job that you just discussed, such as cashing bonds? A. Oh, it may have been about perhaps six months to a year later, about six months——

Q. What? A. About six months later.

Q. Who gave you the instructions? A. Well, the man—Mr. Magness, I believe.

Q. Mr. Magness? A. Yes.

Q. What was his position in the bank at that time? A. He was a special checking teller and I helped him.

Q. And it was he who gave you the instructions as to the procedure you were to follow in connection with the cashing of bonds? A. I can't give you a specific answer on that (552) because I don't know who gave it; I imagine it was Mr. Magness.

Q. Did you see any circular letter with regard to the— A. No, I don't believe I did.

Q. (Continuing) —cashing of bonds?

Mr. Hallinan: I object to this, your Honor.

The Court: She has answered. I will let it stand. Did you hear the answer?

Mr. Hallinan: No, I did not.

The Court: Will you read the answer?

(Answer read.)

Q. Now, on the occasions when you say you saw Mishel come in and out of the bank, the number of times you have told us, will you tell us whether you have a recollection as to whether he always came alone or whether he came in with other people, from time to time? A. He may have had people with him at different times, yes.

Q. Could you pin-point the particular times when he did or he didn't have people with him? A. No, I couldn't.

Q. I think you said on one of the occasions when you cashed the bonds, which you testified about on your (553) direct, you looked over and you saw Mr. Mishel sitting near or at the desk of Mr. Miller? A. Yes.

Q. Would you know when he came into the bank on that day? A. No.

Q. When you know who he spoke to first when he came into the bank on that day?

Mr. Hallinan: I object to the form of this question, your Honor. It assumes something. I think he can ask——

The Court: All right, I will sustain the objection at this point.

Q. Will you tell us whether or not you know how long he was at the bank prior to the time that you say you saw him sitting near Mr. Miller's desk? A. No, I can't.

Q. I can't hear you. A. No.

Q. So that you don't know whether he was there a matter of minutes or hours, is that right? A. That is right.

Q. You don't know whether he came in alone on that occasion or came in with others?

(554) Mr. Hallinan: I object to the form of this question, your Honor.

The Court: I will overrule the objection.

Q. Is that right? A. What was the question?

Q. You don't know whether he came in alone or whether he came in with others on the occasion that you testified about? A. That is right.

Q. So that can you tell us whether you know as to whether or not if he came with others he was at Mr. Miller's desk with some other person or persons? A. No, he wasn't at Mr. Miller's desk with some other person because he was there alone.

Q. That is when you looked over? A. When I looked over——

Q. I am asking you——

The Court: Please.

A. When I looked over both times he was seated alone with Mr. Miller.

Q. My question is, at the time when he came into the bank would you know whether or not—I think you said a moment ago you didn't know whether he came in with a person or didn't come in with a person; is (555) that right? A. That is right.

Q. You are telling us what you saw? A. That is right.

Q. On the occasion when you looked over, and that was after Mr. Kennedy had talked with you? A. That is right.

Q. And before that you can't tell us whether or not he came in with another person or he didn't? A. No.

Q. You can't tell us whether he brought in another person to Mr. Miller or he didn't? A. No.

Q. If he brought one, you know nothing about it? A. No.

Q. Are you sure there were chairs alongside the railing, in fact, chairs on either side of the railing, where Mr. Miller's desk was and where the other officer desks were? A. Oh, there were chairs on the platform, yes.

Q. Do you recall now whether or not on that occasion any people were sitting in those chairs? Will you tell us one way or the other? A. From where my place was looking across, (556) there was no one there other than Mr. Mishel and Mr. Miller.

Q. At his desk?

The Court: Don't interrupt.

Mr. Rosenblum: I am sorry.

A. That is right, at his desk.

Q. But do you know whether or not anyone was sitting in those chairs on either side of the railing? A. Not in my line of vision looking across, looking directly across there was no one seated other than Mr. Mishel and Miller.

Q. The only person at the desk with Mr. Miller was Mr. Mishel?

Mr. Hallinan: I object to that.

The Court: You go ahead and back up to the table there and see if we can get this slow enough so that everybody can hear what is going on.

Mr. Hallinan: I object to the last characterization.

The Court: Will you read the question?

(Question read.)

Mr. Hallinan: Her answer was, "In my line of vision." It was broader than that.

The Court: I will sustain the objection, (557) and as far as the fact sought, we have had that two or three times.

Q. Do you recall whether Mr. Perry, in the presence of Mr. Sokolsky, when he talked with you at the Irving Trust Company on July 31, 1956, with regard to whether or not anyone was sitting or standing close by, do you

recall whether you told Mr. Perry and Mr. Soko'sky that you couldn't tell one way or the other? A. That was not the way the question was put, I don't believe, at that time. He asked a question, if there might be someone standing at the door or something like that. Well, naturally, I wouldn't know that.

Q. Standing at the door? A. That is the way he put it, if there someone—could there have been someone standing near the door. That is the way——

Q. The door to the gate or door to the entrance of the—A. The door to the entrance of the—the door of the bank, the door of the entrance to the door of the bank. That is the way I recall the question. If there could have been anyone near the door or standing around.

Q. You say the bank was busy and people were coming in all the time and going out all the time, is (558) that right?

Mr. Hallinan: We have had this, your Honor, we have had this twice, your Honor.

The Court: Sustained.

Q. Was there a door in the gate through which one could pass and get on to the officers' platform? A. There wasn't a door; there was an opening, I believe.

Q. Was there a gate? A. No, there was an opening.

Q. One you could step on to and then go to the various desks? A. That is right.

Q. Do you recall whether the opening was in the vicinity of Mr. Miller's desk? A. It was a little more to the left, I believe.

Q. That is, as you approached, Mr. Miller's desk it was a little to the left? A. It was nearer to the door coming in, coming into the bank, nearer there.

Q. As you came into the bank, was Mr. Miller on the left-hand side or the right-hand side? A. I beg your pardon?

(559) Q. As you came into the bank was Mr. Miller's

desk on the left-hand side or the right-hand side? A. On the left-hand side.

Q. You say the opening— A. Well, it wasn't directly in front of Mr. Miller's desk. That is what I meant to say. The opening, it was a little more to the left of his desk. It was——

Q. It was close by? A. It was close by, yes.

Q. Can you tell us what the practice was in connection with the use of the redemption forms? A. I don't understand the question.

Q. Well, in connection with the cashing of a bond was a redemption form used? A. Yes, it was.

Q. And you said there were pads of them in blank? A. They were kept in my desk. There was one pad, usually.

Q. And they were in blank? A. That is right.

Q. Right? A. Yes.

Q. And can you tell us what was done by you or by (560) the person in connection with the cashing of a bond, what was done in connection with the preparation of a redemption form? A. Well, I would put the amount paid out on there. I would have the bank stamp placed on, and the date, and the person would sign it.

Q. You always insisted on that? A. That was what was done, yes.

Q. What is that? A. Yes, that is what was done.

Q. That was pursuant to the instructions you received? A. I believe so, yes.

Q. And you always insisted that the person signed the redemption form?

Mr. Hallinan: Just a minute. Your Honor, that is why I objected most strenuously when we got into this area. There are two situations to which this witness has testified: Where there is an account at the bank and where the person is not known. I wish that the question would be limited so it is clear. This question is not.

The Court: Well, read the question back.

(Question read.)

(561) The Court: Well, I will let her clarify it as she sees fit.

You don't have to answer it yes or no; you just tell us what you did.

Mr. Rosenblum: I am sorry. I just did not get that. What was that answer?

The Court: She hadn't answered it. I said I would let her answer the question but not necessarily yes or no. (To the witness) Just tell us what you did and if there were different situations.

Mr. Rosenblum: All right.

Q. Please do. A. If the person were known to me he would sign the redemption form in my presence. If he were not known to me he would go over to one of officers and sign it in their presence, and then come back.

Q. And you would then accept the redemption form together with the bond and you would cash it when it came from an officer? A. That is right.

Q. But in every instance where you knew the person, the rule was followed that the person whose bond you were cashing had to sign the redemption form in your presence, is that right? (562) A. Yes, that is right.

Q. Can you tell us whether that was an unalterable rule? A. I beg your pardon?

Q. Can you tell us whether it was an unalterable rule or one that you couldn't alter? A. Well, that is the way it was done.

Q. Now, do you recall speaking with a secret service agent by the name of Sershen? A. Yes, I do.

Q. Can you tell us about when you talked with him? A. I believe it was about in the summer of 1950.

Q. And where did he see you? A. At my house.

Q. Did you speak to him again after that? A. Yes.

Q. Do you recall whether he made a memorandum in your presence of the talk you had with him?

Mr. Hallinan: I will object to this. I don't see the relevancy of the memorandum of a secret service agent.

The Court: I will sustain the objection to it.

Mr. Rosenblum: Exception.

(563) Q. Was he alone at the time he talked with you or was there another person with him? A. He was alone at the time.

Q. On the occasion when you were away, do you recall whether or not you gave instructions to the person who relieved you as to the steps which were to be taken in connection with the cashing of bonds? A. Yes, I would have done that.

Q. You did give such instructions? A. I believe I did.

Q. You don't have a positive recollection, but that is your best belief? A. I don't have a positive recollection, no.

Q. But that is your best belief? A. I believe that is the best I can give.

Q. Did you give such instructions to the lady you mentioned before? A. I may have; I can't give you a definite answer.

Q. Did you give such instructions to anyone else? A. No, she would be the only one working with me.

Q. So that during the time that you were with the Pennsylvania Exchange Bank you say the only person who did the kind of work you described to us in connection with the savings bonds that you know of was this lady (564) whose name you mentioned before? A. Well, that is not correct. About cashing bonds?

Q. Yes. A. The other tellers would do that.

Q. On the occasions they did that. But when you were away? A. They did on occasions.

Q. Will you tell us whether you gave them any instruc-

tions as to what was to be done? A. No; they would have known.

Q. That is, what they had been there for. When you were there? A. Yes, they were——

Q. The fact is, you didn't give them instructions? A. I didn't give instructions, no; that is correct.

Q. I think you told us yesterday about the cabinet where the redemption form pads, before they were filled out, were kept in a stationery cabinet? A. Well, they would have been kept in the supply room.

Q. Do you recall ever being in the supply room? A. I may have on occasions, yes.

Q. Do you recall whether in the supply room (565) there are a whole bunch of these pads in blank form? A. I don't recall just what was in the supply room. There may have been, yes.

Q. When you needed another pad, what did you do? A. I suppose I sent somebody up for it.

Q. To get it from the supply room, is that right? A. Yes.

Q. You told us you had a pad that you kept in your desk? A. That is right, yes.

Q. That wasn't the pad available to people in the bank, was it? A. No.

Q. There were pads in the supply room? A. Yes.

Q. And there were many pads in the supply room, is that right? A. Yes.

Q. In fact, on occasions, at night, did you leave your pad in your desk? A. Yes, I did.

Q. Did you lock your desk at night? A. I don't think I did, no.

Q. Don't you recall? Did you have a key to your (566) desk? A. I must have, but I don't recall whether or not I locked it.

Q. Will you please tell us what the practice was——

Mr. Rosenblum: Does your Honor wish to stop at a certain time?

The Court: No. We will go on about another seven or eight minutes.

Mr. Rosenblum: All right.

Q. You said that you received these bonds either from people you knew or from people you didn't know and they had the approval of an officer. After you cashed the bonds tell us what you did with them. A. After I cashed the bonds?

Q. Yes. What was your practice as to what you did with the bond or bonds after you cashed them? A. Well, sometime during the day I would enter it in the bond register book, get all the information directly from the bond itself.

Q. You would enter it in the what? In the bond register? A. In the bond register book, yes.

Q. Now, is that a register made up of sheets, (567) which I think you have identified as Exhibits 13 and 14, I think, to 17 or 18?

(Mr. Hallinan hands to Mr. Rosenblum.)

Q. Take the top one, which is 13 in evidence. I ask you to tell us whether some of the writing on that exhibit is in your handwriting. A. Yes, it is.

Q. Now, will you tell us, as you look across the top— A. I beg your pardon.

Q. As you look across the top will you tell us the entries that you made, when you made an entry, as you said before, in a bond register? A. I would put the date, the bond number.

Q. That you would either put by stamp or in handwriting? A. No, in handwriting.

Q. What is that? A. In handwriting.

Q. Never by stamp? A. All of this is in handwriting except the date stamp.

Q. I say the stamp, the stamp would be either (568) in handwriting or be stamped? A. No, I said the only thing that was stamped on this would be the date stamp. Everything else is in handwriting. The bond number would appear, the date of issue and the month and year of the bond.

Q. Before that you said you had a bond number? A. Yes.

Q. That was in handwriting? A. That is right.

Q. Then you had a date of issue? A. The date, the month and the year of issue of the bond.

Q. The month and the year? Keep your voice up, Miss Graef. A. The month and the year, yes.

Q. And then? A. The amount paid.

Q. And then? A. And the name of the person.

Q. The name of the person? A. The name on the bond.

Q. That is you then— A. The name appearing on the bond, yes.

Q. You listed the name of the owner? (569) A. The name of the owner, yes.

Q. Right? A. That is right.

Q. And then after you did that—may I summarize it by saying: Was the same practice followed in connection with all these others? A. That is right.

Q. Which are 14, 15, 16, 17 and 18? A. Yes.

Q. Right? A. That is right.

Q. Now, after you made the entry in the bond register, what did you then do with the bonds? A. What did I do with the bonds?

Q. Yes, please. A. Well, I kept them there and at the end of the day I ran them up on an adding machine.

Q. Yes? A. I also ran the bond redemption forms on the——

Q. The what? A. The bond redemption forms, I ran

them up on the adding machine, make sure that they both tallied, and that was to help me prove my cash at the end of the day.

Q. Then what did you do with the bonds? (570) A. Well, then they were sent down to the Federal Reserve Bank.

Q. No. Let us assume that a person came in, you knew the person, you cashed the bond, you made the entries that you have told us about. What did you do with the bond, firstly what did you do with the bond? A. It was kept in my cage until the end of the day.

Q. Was that in a drawer of your desk? A. No, it was kept on the top.

Q. On the top? A. That is right.

Q. What did you do with it at the end of the day? A. I just told you, I would have to use it to prove my cash.

Q. No. After you have done that, at the end of the day when you did all the things you told us about, including the proving out the amount that you paid out as against the amount of the bond which came in, what did you do with the bond? A. They would be sent down to the Federal Reserve Bank.

Q. Every day? A. It was my recollection that they were.

(571) Q. Every day? Do you have a definite recollection? A. That is the way I recall it.

Q. Tell us, how did they get down to the Federal Reserve? Who did you give them to? A. Well, they must have been placed in an envelope.

Q. You say they must have been placed. A. Yes, because I don't recall that too well.

Q. You don't recall placing them in an envelope? A. Well, I must have placed them in an envelope, but I don't recall that part of it.

Q. Well, for how many years had you been doing this? I think you said you were there two and a half years, the first six months you didn't do this kind of work but you

did do it for the next two years, is that right? A. That is right, yes; but there have been six years that I haven't done it.

Q. It is six years since you have done it. Do you recall, then, whether or not—you say you have no recollection. You knew they went into an envelope? A. That is right.

Q. Whether that was your function or not you are not sure of, is that right? (572) A. That is right.

Q. Well, who did you turn the bonds over to? We are at the point now where you are at the end of the day, you have done everything you have told us about; then you say you had the bonds on top of your desk? A. That is right.

Q. Who did you turn them over to each day? A. I can only tell you that the only thing I recall is placing them in an envelope and sent them to the Federal Reserve Bank. That is all I recall.

Q. Did you send them to the Federal Reserve? A. Well, I don't know.

Q. You said you only recall sending them—by that do you mean that you turned them over to someone with instructions to take them to the Federal Reserve Bank? A. I only recall placing them in an envelope to the Federal Reserve. What happened then I don't know.

Q. Were they mailed? A. No, they wouldn't have been mailed.

Q. Were they delivered? A. They must have been delivered.

Q. Well, do you know whether they were? A. No, I don't.

(573) Q. Did you make it a practice at the end of each day when you finished with your work to put these bonds into an envelope and then leave it on top of your desk when you walked out? A. No, I wouldn't have done that, but I can't tell you what I did because I don't recall.

Q. In connection with your work did you have a box which was put into the vault each night? A. Yes.

Q. And in that box you kept the cash which you used in connection with the cashing and other things that you needed currency for? A. That is right.

Q. See if you recall whether or not those bonds were put into that cash box and then put in the center of the vault each night until such time as they were all sent out to the Federal Reserve Bank A. Yes, that may have been.

Q. What is that? A. That may have been, that sounds about right.

Q. So that that would be the procedure, that is your best recollection, you think that may have been done? A. To the best of my recollection, yes.

(574) Q. All right. Now, tell me this: In connection with the redemption forms, the ones that you say, in the instances where you cashed a person's bond and you knew the person, it bore the signature of the owner of the bond, is that right? A. That is right.

Q. And in the instance where it was approved by someone else, did you receive a redemption form which also had the signature of the owner of the bond? A. Would you repeat the question, please?

Q. I say: The two kinds of cashing you say you used were where you knew the person and the person, you said, signed in your presence his name or her name upon the redemption form, is that right? A. That is right.

Q. And, in addition to that, you say in the instance where you didn't know the person personally, you would cash the bond when you received approval from an officer? A. Yes, sir.

Q. At that time did you also receive a redemption form? A. Oh, yes.

Q. And where it would say "Signature" that would (575) be the signature of the person that you compared on the bond? A. Yes.

Q. Is that right? A. That is right.

Q. Now, what did you do with the redemption forms

at the end of the day? You have told us about the bonds now. Now, tell us what you did with the redemption forms. A. They were used to help prove up the cash.

Q. They what? A. They were used to help prove up the cash at the end of the day. Then they would have been placed in the box and placed in the vault.

Q. That is, your best recollection would be that they went with the bonds which went into the vault? A. That is right, yes.

Mr. Rosenblum: I will have just one or two questions on this topic, your Honor, then I can stop, I think.

The Court: All right.

Q. Tell me, in connection with the redemption forms, would you send them also to the cage each night? A. Would I send them to the cage?

(576) Q. To be placed in the vault in the box that you had that you sent to the vault? A. Well, they became bank records, I don't know where they were kept.

Q. What did you do with them each day? A. I don't recall what I did with them.

Q. Do you recall whether or not you kept them together until a certain time in the month, like the end of the month? A. That may have been. I can't recall.

Q. You have no recollection as to that? A. No, other than to help me prove up my cash. That is as far as I recall.

Mr. Rosenblum: Shall I stop here, your Honor?

The Court: All right. We are going to be slow getting back from lunch today; we won't be able to resume until 2.30. Don't discuss the case. We will recess now until 2.30.

(Jury retired.)

The Court: All right, we will see you at 2.30.

(Adjourned to 2.30 o'clock p. m.)

(577)

AFTERNOON SESSION

(Jury in box.)

VIRGINIA GRAEF resumed.

Cross examination continued by Mr. Rosenblum:

Mr. Rosenblum: May I have Exhibits 13 to 18, please?

Q. Miss Graef, did you ever speak to Mr. Miller about the Chernoff bonds? A. No, I did not.

Q. Did you ever speak to Mr. Miller about anything? A. About anything?

Q. Yes. A. I don't believe I did, no.

Q. You don't believe you did; right? A. No.

Q. Tell me, did you know whether or not Mr. Mishel during the year and at Christmastime spread gratuities around to tellers and other employees of the bank?

Mr. Hallinan: I will object to this, if your Honor please.

The Court: Sustained.

Mr. Rosenblum: Exception.

(578) Q. Miss Graef, I show you Exhibit 13 in evidence and direct your attention to the fourth from the bottom line where the words "Nat Chernoff" appear. Do you see it here? A. Yes, I see it.

Q. It is under a column which is headed by certain words that you described—the purpose of which you described to us before? A. Yes.

Q. Will you tell us just what that means when you have the words "Nat Chernoff"? A. That was the name appearing on the bond.

Q. In other words, you recorded the name of the person that appeared on the bond at the time you made up these redemption forms? A. That's right.

Q. Was it carefully done? A. That's right, the name appearing on the bond.

Q. Do you realize the importance of having your records conform with the bond records?

Mr. Hallinan: I will object to this question, your Honor.

The Court: Sustained.

Q. Did you make them conform? (579) A. The name on the bond, that is what was entered there. The name appearing on the bond.

Q. Can you tell us whether or not when you said before that you checked at the end of a day the bond register and the redemption forms—do you remember that? A. What do you mean I checked the bond——

Q. Did you use the redemption form at the end of the day— A. To prove up cash, not to enter in the bond register.

Q. Cash, the amount that you gave out? A. Yes.

Q. And those redemption forms would show in the cases where you made cashings the name of the person to whom you gave the money; is that right? A. Yes.

Q. In other words, you paid the money to the person whose name appeared on the redemption form who had to be the same person that appeared on the bond?

Mr. Hallinan: I will object to this, your Honor.

The Court: I will sustain the objection.

Q. Will you tell us whether or not the name of (580) the person that appeared on the redemption form, in those cases where you cashed bonds, was the person to whom you gave the money?

The Court: You say "in those cases where you cashed the bonds."

Are you trying to differentiate those she knew from the others?

Mr. Rosenblum: Yes.

Q. Where you say you knew a person to be a particular person, you cashed his or her bond; is that right? A. Yes.

Q. In those instances, that person that you knew would be the person to whom you gave a redemption form to fill out? A. Yes.

Q. And that person's name would be the person who was the owner of the bond? A. Yes.

(581) Q. Then you made the entry in the bond register to show the name of the person who was the owner of the bond? A. Not from the bond redemption form, I didn't make it from that; I made it from the bond itself.

Q. From the bond itself? A. That is right, yes.

Q. Then you recorded from the bond itself? A. I took everything from the bond, the number, the date, everything directly from the bond.

Q. And in these instances where you knew the person yourself— A. Yes.

Q. —you say that you gave the money to that person whose name appeared on the bond as known to you? A. Yes.

Q. And the redemption form carried the name of the person?

Mr. Hallinan: May I——

Q. Is that right? A. Yes.

Mr. Hallinan: May we have the answer—I hate to do this, but may we approach the bench, ever so briefly?

(582) The Court: Yes. I don't want any confusion.

(The following proceedings took place at the bench out of the hearing of the jury.)

Mr. Hallinan: Before, when I requested that the matter as to the procedure followed with respect to bonds where the person had an account at the bank, I requested that that matter wasn't part of the direct.

The Court: All right.

Mr. Hallinan: I did that for this specific purpose, which I think is now coming very sharply into focus. Mr. Rosenblum has in his hands and has just interrogated the witness with respect to the bond register which we have offered in evidence, and all of those as they related to the evidence in this case relate to a case where the person did not have an account.

The Court: Yes. If you want to limit it to that I am now ready to do so.

Mr. Hallinan: I do, yes. I make that request.

The Court: I will so limit it.

Mr. Rosenblum: I am trying to show the practice.

(583) The Court: The practice with respect to the people she knew I think you have explored as far as it has any value in this case.

Mr. Rosenblum: May I continue? It is a proper problem. I wasn't doing it for the other purpose. I showed a practice——

The Court: Go ahead. What else do you want? I didn't mean to cut you off. But at this point, unless you have good reason to persuade me to a different conclusion, I am not going any further as to her practice with respect to people whom she knew. In other words, the inquiries which you have been pursuing about persons known to her as depositors, I think you have gone into that as far as it has——

Mr. Rosenblum: May I continue a little further and you will see the purpose?

The Court: No, unless you want to tell me what it is.

Mr. Rosenblum: Yes, I will tell you what it is. Where she says the names conform, as she has indicated, they don't.

The Court: What has that got to do with it? He says that the accounts where she didn't——

Mr. Rosenblum: The claim of the Government (584) here is that it must be paid to the owner.

The Court: No, it is not.

Mr. Rosenblum: Yes, because you have here, they talk about Blanche, they talk about David, as to whether or not the money was paid to a person other than those two.

The Court: They haven't made any such claim here. There is no such claim in this case.

Mr. Rosenblum: I mean in the opening.

The Court: That you can't pay to an authorized agent.

Mr. Rosenblum: That is what they say. It could be paid to an authorized agent——

The Court: You say they have made such a claim. I don't recall that they have.

Mr. Rosenblum: They pointed out accounts in

the names of certain persons and they pointed out that the moneys weren't paid to these persons. That is practically the opening statement. Covering the bonds in the Nat Chernoff case.

The Court: I don't recall that. But you don't move me from my position. There is no profit in pursuing it further. The situation as to accounts where she, because of her own knowledge of the depositor, (585) did anything, I don't see has any relevancy or any materiality which justifies any more time on it than we have already spent.

Mr. Rosenblum: I think if it is the practice which was in vogue at that time, in other words, if the practice, if it is agreed by the Government that the practice is such, and they agree, that you may pay money to another person, say in the immediate family, if that is the Government's position, then I wouldn't press it.

The Court: If there is any position on that, it is a matter of your defense; that is not cross-examination of this witness. She hasn't given anything on direct on that.

Mr. Rosenblum: She has given the practice that has been followed.

The Court: I think I have made my position clear. I am not going any further on this subject as to accounts which she did anything with because she knew the depositors. I will sustain the objection.

Mr. Rosenblum: Would you stop me from asking her whether on occasion she paid money to people other than the owner of the bond?

Mr. Hallinan: We confuse the two issues. (586) That is why I objected and pressed my objection. This area is very confusing, unless, if

he wants, to call her back at the proper time and go into it.

The Court: I was going to say that to me has nothing to do with her direct examination. She has given no statement, general or otherwise, on the subject.

Mr. Rosenblum: She has given the general statement. She stated that the moneys were paid, the practice was for her to pay money to the persons who were the owners of the bonds as appeared from the names on the bonds.

The Court: I don't recall any such generalization. If she did, I would rather guess that it would be on cross. So I will sustain the objection at this time. When you come to put in your own defense we can canvass the problem then.

Mr. Rosenblum: Exception.

(The following proceedings were held in the hearing of the jury.)

By Mr. Rosenblum:

Q. This morning I tried to recall the name of another type of bond. Now I ask you, did you also cash bonds known as Armed Forces Leave Bonds?

(587) Mr. Hallinan: I object to this and any other inquiry along this line, your Honor.

The Court: I sustain the objection.

Mr. Rosenblum: Exception.

I have no further questions.

The Court: All right. Anything else?

Mr. Hallinan: No questions.

The Court: All right. Thank you.

(Witness excused.)

Mr. Hallinan: Mr. Horan.

FRANCIS HORAN, JR., called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Horan, by whom are you employed right now? A. The Lafayette National Bank of Brooklyn.

Q. Keep your voice up good and loud so that we can all hear you.

And in what capacity are you employed there? A. Supervisor of loan and discount.

Q. How long have you been employed there? A. Since June 1951.

Q. Where were you employed prior to that time? (588) A. Bensonhurst National Bank.

Q. In what capacity? A. Loan and discount clerk.

Q. How long were you employed there? A. From May 1950 to June 1951.

Q. Where were you employed prior to that time? A. Pennsylvania Exchange Bank.

Q. What period of time were you employed at the Pennsylvania Exchange Bank? A. From February 1949 to April 1950.

Mr. Rosenblum: May I have that date again?
Mr. Hallinan: February 1949 to April 1950.

Q. Now you have to keep your voice up? A. Yes.

Q. In what capacity were you employed at the Pennsylvania Exchange Bank? A. As a paying and receiving teller.

Q. Would you describe briefly, please, for the Court and jury what your duties were there? A. My duties were to accept deposits and cash checks.

Q. Now while you were employed at the Pennsylvania

Exchange Bank, who was the president of that bank? A. Mr. James Miller.

(589) Q. Do you see Mr. Miller in court? A. Yes.

Q. Would you point him out for us, please? A. On the end, the gentleman on the end.

Mr. Hallinan: May the record indicate that the witness has identified the defendant.

Q. Now while you were employed at the Pennsylvania Exchange Bank during the period you have outlined for us, was there a definite procedure to be followed at the bank with respect to the cashing of United States Savings Bonds where the person was not known to you and where the person had no account at the bank? A. Yes.

Q. What was that procedure? A. The procedure was to refer the person to an officer of the bank for authorization to cash the bond, as we had no authorization to cash bonds for persons unknown to us as customers. (590) The officer of the bank would then put his authorization either on the redemption tickets or on the bond and return the person to us.

Q. And then how would you process the bond after that? A. The matured value of the bond would be figured from the chart, the person would either be given cash or a check, and the bond would be placed in the cash drawer and the redemption ticket become part of the bank's records.

Q. At the time you were at the bank—would you turn to Government's Exhibit 12, which is right behind you, and, if you can recall—I will give you a pencil—draw approximately on that diagram where you were ordinarily located at the bank. A. (Witness writes.)

Q. Would you put the initials "F. H.," your own initials, next to that? A. (Witness writes.)

Q. Do you recall a teller by the name of Virginia Graef? A. I do.

Q. Will you indicate on that chart where she was located? (591) A. right here (indicating and writing).

Q. Did you from time to time fill in for Miss Graef? A. I did.

Q. And when you would fill in her for, would you fill in for her at her cage? A. Yes.

Q. From that cage can you indicate where Mr. Miller's desk was located? A. Approximately here (indicating and writing).

Q. Would you indicate it again, please? A. Approximately right here (indicating).

Q. Indicating the square with "Miller" written in it? A. Yes.

Q. Did you just place that "X" where the "X" is? A. Yes, I did.

Q. From where Miss Graef's cage was could you see Mr. Miller's desk? A. Yes, I could.

Q. Were there any obstacles in between the tellers' cages and the place where Mr. Miller was located that would obstruct your vision? A. No, no.

(592) Q. Are you familiar with a person by the name of Irving Mishel? A. Yes.

Q. How are you familiar with him? A. As a customer of the bank.

Q. Did you have occasion sometime in January of 1950 to fill in for Miss Graef at her window? A. Yes, I did.

Q. Did you have occasion during that time to cash bonds registered in the name of Chernoff? A. Yes, I did.

Q. Do you recall what date that was? A. January 19.

Q. What year? A. 1949.

Q. 1949? A. 1950. January 19, 1950.

Q. Do you know who was what was called the regular bond teller at the bank at that time? A. Miss Graef.

*Francis Heran, Jr.—for Government—Direct*

Q. Will you tell the Court and jury everything that you recall about the cashing of the Chernoff bonds on January 19, 1950, and you will really have to keep your voice up now. (593) A. It was sometime in the morning Mr. Kennedy came to me with a stack of bonds and told me——

Mr. Rosenblum: I object to anything said by Mr. Kennedy unless it appears to be in the presence of the defendant.

The Court: I will overrule the objection.

Mr. Rosenblum: Exception.

Q. Would you start again, please? A. Sometime in the morning Mr. Kennedy brought me a stack of bonds and told me to cash them, whereupon I asked him where he got the bonds. He said, "Mr. Miller sent them over."

I told Mr. Kennedy that I didn't know the person inscribed on the bonds as owner and would he please get authorization from Mr. Miller in the form of an initial to allow me to do this. He took the bonds, returned to Mr. Miller. He came back again with the bonds and, in his words, he told me that Mr. Miller said for me to mind my own God damn business and do as I was told.

I said, "I am sorry. I don't have authorization to cash these bonds."

He took them back again, whereas Mr. Mishel was sitting at the desk with Mr. Miller he got up and left. Sometime afterward Mr. Mishel returned, the bonds were (594) sent over to me again, at which time there was a bond redemption ticket accompanying the bonds. The ticket had been initialed on the back. I cashed the bonds, sent the money back with Mr. Kennedy, Mr. Mishel got up and left.

Q. Did you see Mr. Mishel leave the bank? A. Yes.

Q. Was Mr. Mishel alone when he left the bank? A. He was alone.

Q. What did you do thereafter? A. I placed the bonds in the cash drawer and the bond redemption ticket with the others in Miss Graef's desk. Then I went to lunch.

On returning from lunch Mr. Kennedy had a conversation with me, and I looked for the redemption ticket. It was no longer there.

Q. I show you Government's Exhibit 3A in evidence, which is a bond redemption form dated January 19, 1950. I ask you to look at that very carefully and tell us whether or not that is the redemption form that you received on the date that you have just testified to. A. No.

Q. As you recall, what is different? A. The difference is that there were bond numbers (595) listed on the back and an initial.

Q. What was the initial? A. "J. M."

Q. Whose initial was that? A. Mr. Miller's.

Q. And that redemption form you hold in your hand has not those notations? A. No.

Q. Is this the redemption form that you received on that day? A. No.

Q. I show you Government's Exhibit 3 in evidence and ask you if these are the bonds that you cashed on January 19, 1950. A. Yes, they are.

Q. What notations did you place upon those bonds? A. I placed the redemption stamp and my initial, in some cases the last name.

Q. What do you mean by "redemption stamp"? A. The stamp that appears on the bond saying, "Paid" and the amount "Each bond is received for", the date, the name of the bank and a place for my initial.

Q. And then you placed your initial on each bond, or name?

(596) Q. While you were at the Pennsylvania Exchange Bank, Mr. Horan, was anyone ever introduced to you as Nat Chernoff? A. No.

*Francis Horan, Jr.—for Government—Direct*

Q. In particular, did Irving Mishel ever introduce anyone to you as Nat Chernoff? A. No, he did not.

Q. Do you recall what form the redemption forms came in while you were at the bank? A. They came in pad form.

Q. Do you recall where those pads were kept? A. Well, the current supply was kept in Miss Graef's desk, and the rest of the supply was kept in our supply room on the balcony.

Q. Did you ever give a pad full of redemption forms to Irving Mishel? A. No.

Q. Did you ever give a pad full of redemption forms to anyone? A. No.

Q. Did Mr. Miller, as president of the bank, have access to the pads of redemption forms? A. Yes.

Q. Did he have access to the bond register at the bank? (597) A. Yes.

Q. Did he have access to the bonds themselves before they went to the Federal Reserve Bank for collection? A. Yes.

Q. Now, from the date January 19, 1950, up to and including this moment has Mr. Miller ever discussed with you the cashing of the Chernoff bonds that you handled? A. No.

Q. Has anyone at the bank on Mr. Miller's behalf or stating that it was on Mr. Miller's behalf ever discussed the cashing of the Chernoff bonds with you within the same period of time I outlined in my last question? A. No, they did not.

Q. Did anyone from the law firm of Dorf & Levy ever discuss with you the cashing of the Chernoff bonds? A. No.

Q. And in particular I ask you did Mr. Dorf ever discuss it with you? A. No, he did not.

Q. Did Mr. Levy ever discuss it with you? A. No.

(598) Q. Did a man by the name of Weiss ever discuss it with you? A. No.

Q. I show you Government's Exhibit 9 in evidence and I ask you if you have ever seen the individual represented in that photograph before. A. Yes, I have.

Q. Where did you see him? A. In the bank.

Q. Would you keep your voice up now? A. In the bank.

Q. In what bank? A. The Pennsylvania Exchange Bank.

Q. How often did you see him in there during the period of time that you were employed from February, 1949, to April, 1950? A. Frequently.

Q. Did you ever see him in the company of Irving Mishel? A. Yes.

Q. Did you ever see him in the bank alone? A. Yes.

Q. Did you ever see that individual and Mishel (599) talking with Mr Miller? A. Yes.

Q. Did you ever see that individual represented in that photograph talking with Mr. Miller alone? A. Yes.

Q. And all of those previous questions, the last few, have reference to at the bank. A. Yes.

Mr. Hallinan: You may inquire.

Cross-examination by Mr. Rosenblum:

Q. About how many separate tickets would you say there were in a pad full of redemption forms? A. I would say there were approximately fifty to a hundred.

Q. From fifty to a hundred? A. Yes.

Mr. Rosenblum: Will you give me the redemption forms, please?

Mr. Hallinan: Yes. Do you want all of them?

Mr. Rosenblum: Yes.

(Mr. Hallinan hands documents to Mr. Rosenblum.)

*Francis Horan, Jr.—for Government—Cross*

Q. I show you Government's Exhibits 1A through 8A and ask you to look at the back and see whether they are or are not all in exactly the same condition. (600) A. They aren't all in the same condition.

Q. They are not all? A. No, they are not.

Q. Show me which one is not in the same condition. A. (Witness hands document to Mr. Rosenblum.)

Q. That is the one of February 15. How about the others? A. They are in different condition than that one.

Q. Do you know whether they are all in the same condition as 3A?

Mr. Hallinan: I am going to object to the form of the question, your Honor, "condition."

Q. That is, without anything on the back. Is that right? A. That's right.

Q. In connection with this one, 7A, can you tell us whether that is Mr. Graef's handwriting?

Mr. Hallinan: I am going to object to questions on 1A, 2A—I have no objection to 3A. That is the one he has looked at—and then 4A through 8A.

The Court: I will let him answer this question. Go ahead.

Q. Look on the back and tell us whether or not that is in the handwriting of Miss Graef. (601) A. I really couldn't say if it was her handwriting or not.

Q. Wasn't it the practice, Mr. Horan, that in those instances where you filled in for Miss Graef, that after you cashed bonds you left the bonds and you left the form on her desk so that she completed the entries? A.

If I worked from her cash, yes. If I did it myself, I would fill it in myself.

Q. And on the days when she was out, you filled in for her on some occasions? A. That's true.

Q. On those occasions do you say that you did or you did not fill in the backs where you cashed bonds? A. If I cashed the bonds from my cash and later sold her the cash, I would fill in the backs. If she was there at the time and I cashed them and gave them to her during the day, she would fill in the backs. My duties were such it didn't permit me the time to do those extra things if she was there.

Q. Can you tell us whether or not the pads to which you said Mr. Miller had access were also available to other officers?

Mr. Hallinan: I am going to object to this, (602) your Honor.

The Court: I will let him pursue it. Go ahead.

A. Any officer of the bank had access to the pads.

Q. And how about the bond register? A. Any officer of the bank would have access to the bond register.

Q. And how about the bond redemption forms? A. Any officer of the bank would have access to them.

Q. It would be the same? A. That's true.

Q. When for the first time did you see Mr. Mishel? A. The first week I worked for the bank he made a deposit and he made it a point to speak to two or three of the tellers there, which I was one. That is the first time I remember seeing Mr. Mishel.

Q. He made it a point to speak to two or three of the tellers? A. That's right.

Mr. Hallinan: That is what the witness said, and I will object to any further questions along

this line. I think this is an area where he makes him——

The Court: I will allow it.

Q. About how long? Did you say it was a conference (603) or a talk between four people? A. No.

Mr. Hallinan: He did not say it was a conference. I will object to the form of that question.

Mr. Rosenblum: I will change it.

Q. You said that was the first occasion when you talked with Mr. Mishel? A. I didn't say I talked with him.

Q. He talked with you and the others? A. No. I was introduced to him.

Q. Who introduced you?

Mr. Hallinan: I will object to this.

The Court: I will let it go. Go ahead.

A. One of the tellers. It is a common procedure to introduce a new teller to the customers at the window. I was a new teller.

Q. Was that Mr. Littlefield? A. It may have been. I am not sure.

Q. Was it Mr. Lucey? A. No.

Mr. Hallinan: I will object to this, if your Honor please.

The Court: I will let it go.

(604) Q. After that did you see Mr. Mishel—can you fix the time, approximately, when you say you saw Mr. Mishel for the first time? A. No, I can't fix the time.

Q. I do not mean time of day. Approximately the period of the year or the month. A. Well, I started with them in February.

Q. 194— A. 9.

Q. 1949? A. Yes. Therefore, it was in February, 1949.

Q. You would say it was in or about the month of February, 1949; is that right? A. That's right.

Q. Thereafter, did you see Mr. Mishel quite often? A. Frequently, yes.

Q. Were there any occasions when you received fight tickets from Mr. Mishel?

Mr. Hallinan: I will object to this, if the Court please.

The Court: Overruled. I will take it.

A. No.

Q. Did you receive any tickets from him? (605) A. No, I did not.

Q. Did you receive any gratuities from him?

Mr. Hallinan: I will object to this, your Honor.

The Court: I will let him ask this witness if he did. Overruled.

A. No, I did not.

Q. Do you recall whether or not on the day when you cashed the bonds that you identified today your account was short by a hundred dollars?

Mr. Hallinan: I will object to this, your Honor.

A. I do not recall.

The Court: I will let him answer. Let the answer stand.

A. I do not recall.

Q. Do you recall whether that was brought to your attention by someone at the bank, about your shortages?

Mr. Hallinan: I will object to this, your Honor.

The Court: Overruled.

A. I do not recall.

Q. Do you recall whether or not you had a whole series of shortages while you were at the bank? (606) A. I had a few shortages while I was at the bank, yes, which was, in my estimation, not uncommon.

Q. And you don't recall whether it amounted to as much as a hundred dollars on the day when you cashed those bonds? A. No, I don't.

Mr. Hallinan: Your Honor, may I approach the bench briefly?

The Court: Sure.

(The following proceedings took place at the bench, not in the hearing of the jury):

Mr. Hallinan: I hope the Court does not feel I am just beginning to carp, but I am getting fed up with the procedure of Mr. Rosenblum and Mr. Perry in leafing through and making remarks which I can hear and which I am sure the jury can hear. It may be unintentional. If they have papers to go through, let them confer at the proper place.

The Court: Be very careful about that.

Mr. Rosenblum: I did not realize that.

Mr. Hallinan: They are constantly going through papers right there in front of the jury.

The Court: I just caution you to be very careful about that.

Mr. Rosenblum: I will.

(607) (The following proceedings were held in the presence of the jury.)

By Mr. Rosenblum:

Q. Do you recall whether any officer of the bank re-

peatedly talked with you about the shortages? A. Repeatedly talked to me? No.

Q. Yes. A. No.

The Court: I caution the jury again that the only testimony you have is what the witness says and not any suggestions or facts incorporated in any question.

Q. Do you know Mr. Brennan? A. Pardon me?

Q. Do you know Mr. Brennan? A. Yes, I know Mr. Brennan.

Q. Do you recall whether he had any talk? Was he manager of the bank? A. At one time, yes, he spoke to me; he was manager of the bank.

Q. About your shortages? A. That is right.

Q. On the occasion that you describe when you say the guard Kennedy brought to you the bonds that you identify, up to the time he brought the bonds to you, (608) I mean up to that time, did you know who was or who wasn't at Mr. Miller's desk? A. No, no. In fact, I didn't notice until the second time I sent them back, I had to send them back, when I looked up to see who was there, I saw Mr. Mishel sitting at the desk with Mr. Miller.

Q. You say in the first place you asked for a redemption form? A. That is correct, initialed.

Q. Was there one brought over without initials? A. The first time none came over.

Q. None came over at all? A. That is true, yes.

Q. You said what? A. Just the bonds the first time.

Q. Just the bonds? A. That is right, that is all that was given me the first time he came.

Q. So that you then asked for the form, redemption form? A. That is correct.

Q. And you say at the time, after you returned it to Mr. Miller, that Mr. Mishel then left the bank? A. No, no, I returned them to Mr. Miller.

(609) Q. Through Mr. Kennedy? A. Through Mr. Kennedy, whereon they were immediately returned to me the second time through Mr. Kennedy. I again told Mr. Kennedy——

Q. Without the-- A. Within the initial or anything. Again I told Mr. Kennedy I had no authorization to cash any bonds for someone unknown to me, please take them back. He took them back. And then is when Mr. Mishel got up and left.

Q. Did you know whether or not by that time some redemption forms had been sent over to a teller with bonds in the name of Chernoff? A. No, I did not.

Q. You didn't know it at the time? A. I didn't know it.

Q. Is that right? A. That is right.

Q. You say the cashing that you referred to was on— A. January 19th.

Q. January 19th. From an examination of the records which you had, like the redemption forms, did you learn that there were two cashings before yours?

Mr. Hallinan: I object to this, your Honor.

(610) A. No.

The Court: He has answered.

A. No, I didn't.

Q. Up to this moment you didn't know whether there were any prior cashings? A. No—yes, I have heard in the past month or so that there have been some, but I didn't know there were any prior cashings to mine.

Q. Who did you hear that from? A. Well, I asked Mr. Lucey when I met him down here one time. He told me that he had cashed some and Virginia Graef told me she had cashed some. I didn't——

Q. That was prior to the time— A. I didn't know the sequence in which they were cashed, who handled what.

Q. Have you since learned— A. Pardon me?

Q. —that prior to the time that the cashing took place that you told us about that there were two other cashings on redemption forms?

Mr. Hallinan: I object to the question on the grounds of irrelevancy, your Honor.

The Court: I will allow the answer.

A. I don't know the exact times that the other (611) cashings took place.

Q. Did you know that they were before yours? A. I still don't know if it was before or after. I never bothered to ask exactly what time, that is, as far as the date goes they were handled.

Q. Did you look at the redemption register—at the bond register at the time of this occasion? A. No, there was no reason to.

Q. You hadn't looked at it? A. No.

Q. Whether there was a reason or not? A. No.

Q. I just wanted to know did you look at it? A. No.

Q. You say you are positive that in the first instance when the bonds came in there was no redemption form— A. That I am positive of.

Q. —along with it? A. Yes.

Q. Did you on any occasion while you were with the Pennsylvania Exchange Bank—were you ever asked by Mr. Miller or any other officer to cash a bond without a redemption form? A. Was I ever asked to do it?

(612) Q. Yes. A. No, I was never asked to do it before.

Q. Did you know whether or not it was the practice at the bank in making their records that a redemption form had to be available in order to check on the cash at the end of the day? A. That isn't the reason for the redemption form.

Q. Isn't that one of the reasons? A. Pardon me?

Q. Isn't that one of the reasons? A. No.

Q. Do you know whether Miss Graef used the redemption form in checking out her balance for the day? A. She may have had her own system. But that isn't—it has nothing to do with the cash, a redemption form. That is just a bank record, that is all.

Q. And it was a bank record which, in this case, when you received the redemption form had the same name on as appeared on the bond, is that not right? A. When it eventually came, yes.

Q. And you say that you then left that redemption form together with the bond— (613) A. No.

Q. What did you do with the redemption form? A. Then I put the bond in the cash drawer; the redemption form was placed with the others that Miss Graef had in her desk.

Q. Was the desk open? A. Her desk was open, sure. She wasn't in that day.

Q. You found other redemption forms in her desk on the occasion when you put this one in? A. That is true.

Q. Then you say that you put the bond where? A. In the cash drawer.

Q. Hers or yours? A. She wasn't in that day. It was my cash drawer.

Q. I mean her cash drawer would be closed if she wasn't in, is that what you mean? A. Her cash would be locked in the vault, her cash wouldn't be brought out for that day.

Q. You had a drawer the same as the other tellers in which you had this cash and at the end of the day it would go into the vault for the night? A. The cash is removed from the drawer and put (614) into the vault.

Q. Then you say that the bond itself was put into the— A. Cash drawer.

*Francis Horan, Jr.—for Government—Cross*

Q. Cash drawer, which at night went into the vault? A. That is correct.

Q. The redemption forms didn't go into the vault? A. No.

Q. Is that right? A. That is right.

Q. Have you ever seen me before? A. Yes.

Q. Do you remember when that was? A. About a little over a year ago.

Q. Do you recall where that was? A. The Lafayette National Bank, at 1273 Fulton Street.

Q. That was after the banking hours, that is, the closing? A. That is right, after three o'clock.

Q. After three o'clock. Do you recall whether on that occasion I was accompanied by Mr. Perry? A. I believe you were, yes.

Q. Do you recall whether at that time I asked (615) you to tell us all that occurred on the day of the cashing of the Chernoff bonds, the one you took care of? A. I don't recall that you asked me that, but——

Q. Do you recall my asking you to tell us what took place? A. Yes, yes.

Q. Did you mention seeing a man whose picture you have just identified at all? A. Yes.

Q. You did mention it? A. I think I did, because before that, in the U. S. Attorney's office, about two and a half years ago, possibly three years ago, I was shown the same picture and asked that, if I had seen him in the bank, and I had affirmed it. If you asked me if I saw Mr. Rosenberg in the bank I would have told you yes.

Q. If I had asked you? A. If you had asked me. I don't remember whether you asked me that or not.

Q. Do you recall whether I asked you or whether you then suggested it to me? A. I don't remember whether you asked me or not (616) or whether I suggested it to you.

*Francis Horan, Jr.—for Government—Cross*

Q. When did you last see Mr. Mishel? A. At the grand jury in this same building some time ago. Offhand I haven't got the fact correlated, or the time correlated, but probably about two and a half or three years ago.

Q. Do you recall whether you and he were seated in anteroom together? A. Not alone.

Q. Do you recall discussing some things with him on that occasion? A. No, no.

Q. You didn't talk to him at all? A. No. When we entered the room, I entered with two other people. He arose. He was with another gentleman; at the time I didn't know the gentleman was a marshal, United States Marshal. He arose and was—and the marshal told him to sit down again. He immediately said, "Hello," to all of us, tried to be very friendly, but the marshal would not allow him to fraternize with us in any way.

Q. When you say Mr. Mishel left the bank after Kennedy, you say, brought back the bond to him, will you tell us about how long after that time, (617) when he left, that he returned to the bank? A. Possibly a half an hour to 45 minutes.

Q. Do you recall that? A. Well, I do, because of the fact that after completing the transaction I went to lunch, and therefore it was between 9 and 11 or 11:30 that the whole matter took place.

Q. Do you know a man by the name of Schnabel?

Mr. Hallinan: I object to this, if your Honor please.

The Court: All right. I sustain the objection.

Mr. Rosenblum: Exception.

Q. Do you know a man by the name of Sam Siegel?

Mr. Hallinan: I object to this, if your Honor please.

The Court: Sustained.

Q. Can you tell us whether or not during the period of time that you saw Mr. Mishel at the bank, did you see him with persons other than the person whose picture you identified?

Mr. Hallinan: I object to this; it is the same two questions previously stated rolled into one now.

(618) The Court: I will allow the answer.

A. Yes, I saw him with other people besides——

Q. What is that? A. I had seen him with other people besides the one in the picture.

Q. Can you tell us during what period of time you saw him with other people? A. Any time from—it could be any day of the week, from Monday through Friday, any time during the year. The man certainly knew people other than the one in the picture.

Q. I mean people that you saw with Mr. Mishel. A. Yes, that is what I am referring to.

Q. Is that right? A. That is right.

Q. Did you know of the relationship of these other people and Mr. Mishel? A. No.

Q. Did you know of the relationship between this man and Mr. Mishel, the one whose picture you identified? A. No.

Q. About when would you say this man for the first time?

The Court: Which man are you talking about

(619) now?

Q. The man whose picture you identified. A. I couldn't honestly say for the first time.

Q. Well, can you give us an approximate date when you saw him? A. I would say it wasn't too long after I started

there, because he would come in to make deposits for Mr. Mishel. That is one relationship I could connect him with Mr. Mishel.

Q. So that on the occasions you saw him, he brought money to deposit, whether it be checks or cash, to the tellers' desks, where you were one of the tellers? A. I had also seen him in with Mr. Mishel.

Q. You saw him with Mr. Mishel? A. That is right. Been in the bank with Mr. Mishel.

Q. Do you remember about how many times you saw him? A. Say frequently.

Q. What would you say is frequently? A. I never counted the times. I could just say frequently. I remember seeing him with Mr. Mishel, and it wasn't unusual. I didn't count the times (620) that I saw him.

Q. You say you left the employ of the Pennsylvania Exchange Bank about when? Just a moment.

(Mr. Rosenblum conferred with Mr. Perry at the defense counsel table off the record.)

Q. Did you ever have any discussion with Mr. Miller about this subject matter you discussed? A. None.

Q. That you have testified to? A. No.

Q. Never? A. Never.

Q. Do you know whether or not over the period of 14 months your shortages amounted to about $700? A. No, I didn't know that.

Q. Do you know whether or not Mr. Brennan told you to resign or you would be fired? A. No. I asked Mr. Brennan, I told him I realized that I was having a lot of hard luck as far as working over the window goes. What did he feel?

Q. You were having what? A. I was having a lot of hard luck over the window. And he said, that, whatever I wanted to do. I told him I was going to resign. And he said, "Well, that's all right." I felt that I should.

*Francis Horan, Jr.—for Government—Cross*

(621) Q. What was the reason that you felt you should? A. I just felt that I should, that it wasn't doing me any good to work there. I couldn't work right in the place. Everything I did I would wind up with a $5 shortage or a $10 shortage.

Q. Or a $150 shortage, a $100 shortage? A. It could have been that much; I don't recall.

Q. You wouldn't say it wasn't? A. Pardon me?

Q. You wouldn't say it wasn't? A. No, I wouldn't say it wasn't.

Q. Haven't you in fact been blaming Mr. Miller for your resigning— A. Pardon me?

Q. Haven't you been blaming Mr. Miller for your leaving the bank in the way you described to us? A. Well, I felt that it had a lot to do with it.

Q. You say after you talked with Brennan you resigned? A. That is right.

Q. Were you required to make good on the shortages? A. No. They ran an over and short account.

(622) Q. What is that? A. They ran an over and short account in the general ledger.

Mr. Rosenblum: No further questions.

Mr. Hallinan: Just a few brief questions.

Redirect examination by Mr. Hallinan:

Q. When did you leave the Pennsylvania Exchange Bank? A. In April 1950.

Q. And have you from that time until the present moment continuously been employed by other banks? A. Yes.

Mr. Hallinan: That is all.

(Witness excused.)

JAMES J. LUCEY, JR., called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Lucey, by whom are you employed? A. The Pennsylvania Exchange Bank.

Q. In what capacity? A. Manager.

Q. Of what branch? (623) A. 38th Street office.

Q. Now how long have you been employed by the Pennsylvania Exchange Bank? A. Since February 1949.

Q. How were you employed during the year 1950 at that bank? A. I was in the loan and discount department, 48th Street office.

Mr. Rosenblum: Would that be 1949 or 1939?

Mr. Hallinan: 1949.

Q. While you were at the Pennsylvania Exchange Bank in 1950, who was president of that bank? A. James W. Miller.

Q. Would you point the defendant out, please? A. (Witness indicates.)

Mr. Hallinan: May the record indicate that the witness has identified the defendant.

Q. Now while you were employed at the Pennsylvania Exchange Bank during 1950 was there a definite procedure to be followed by the bank in the cashing of United States Savings Bonds where the person was not known at the bank and where the person had no account at the bank? A. Yes, there was.

(624) Q. Would you tell the Court and jury what that procedure was, please? A. In the event that the party cashing the bonds did not have an account there, the teller was not authorized to cash those bonds. The teller had

to refer them to an officer, and it was up to the officer to okay that transaction.

The customer or the party would then bring the bond back to the window and the teller would then cash it, providing it was initialed on the redemption form.

Q. After that, the bond would be processed, would it? A. The bond would be processed and the party would be given the money. It would be entered in the register and the party would be given the money.

Q. What would happen to the bond redemption form thereafter? A. It would become a part of the bank record.

Q. And will you show us, if you can, on Government's Exhibit 12 behind you where you were located in 1950? Were you at one of the teller's cages? A. The day I cashed the bond?

Q. Well, all right, let us start there. Where (625) were you the day you cashed the bonds? A. This cage here (indicating).

Q. Is that the one with the initial "V. G." and an "X"? A. That is right.

Q. With respect to that, where was Mr. Miller's desk located? A. (Witness indicates.)

Q. Indicating X and the square, not quite a square, but almost, where "Miller" is written in.

Could you see Mr. Miller's desk from that spot you have indicated, where Miss Graef's cage was? A. Yes, I could.

Q. Are you familiar with a person by the name of Irving Mishel? A. Yes.

Q. How are you familiar with him? A. He was a customer in the bank.

Q. Now sometime in February 1950 did you have occasion to fill in for Miss Graef, the bond teller? A. Yes, I did.

Q. Do you recall on two occasions in 1950, in February

of that year, cashing bonds registered in the name of Chernoff? (626) A. Yes, I do.

Q. Do you recall when the first time was? A. February 15.

Q. 1950? A. 1950.

Q. Will you tell the Court and jury what happened on that day? A. Well, during the course of business that day Mr. Peter Kennedy, now deceased, who was the floor man, he came over to my window and said——

Mr. Rosenblum: Just a moment. I make the same objection, if your Honor please, as to any conversation by or with Peter Kennedy on the ground that Kennedy is dead and it violates the hearsay rule.

The Court: Overruled.

Q. Would you start again, please?

Mr. Rosenblum: Exception.

A. On that day Mr. Kennedy, the deceased, the floor man, came over to my window and told me to cash some bonds for the boss.

Q. Who was the boss? A. Referring to Mr. Miller. He said they were cashed before, there were some other bonds cashed before.

(626a) So I looked in the bond register and I noticed that there were bonds cashed in the name of Chernoff before.

So, as a memorandum for myself, as a notation of where these bonds came from, I put "JM" on the bond redemption slip and proceeded to cash these bonds.

I then gave the money to Kennedy, and he brought them over to Mr. Miller's desk, where Mr. Mishel and Mr. Miller were sitting.

(627) Q. Was anyone else at the desk with them? A. No, sir.

Q. Did you also cash bonds on February 20, 1950? A. Yes, sir.

Q. Will you tell us what happened on that day? A. On that day Mr. Kennedy came over and he presented a bond and he said, "Cash this for the boss."

Mr. Rosenblum: I make the same objection, if your Honor pleases.

The Court: Same ruling.

Mr. Rosenblum: Exception.

A. I recognized the name, so I proceeded to cash them in the usual way and give Mr. Kennedy the money, and he brought it back to Mr. Miller's desk, and Mishel was there.

The Court: I did not hear the end of that answer.

(Record read.)

Q. Was anyone else at Mr. Miller's desk besides Mr. Miller and Mr. Mishel at that time? A. No, sir.

Q. On both occasions what did you do with the bonds and redemption form when you had finished cashing the bonds? A. I put them in the teller's cash box.

Q. In whose teller's cash box? (628) A. In Miss Graef's.

Q. I show you Government's Exhibit 7 in evidence and ask you if these are the bonds that you cashed on February 15, 1950. A. Yes.

Q. I show you Government's Exhibit 8 for identification and ask you if— A. Yes.

Q. —that is the bond you cashed on February 20? A. Yes.

Q. I show you Government's Exhibit 7A and ask you if that is the redemption form on which you placed the initials "J. M." on— A. Yes.

Q. —February 15, 1950? A. (Witness nods.)

Q. Why did you place the initials on that bond redemption form? A. To show who had presented the bonds or who had sent them over.

Q. I show you Government's Exhibit 8A in evidence

and ask you if you placed the initials "J. M." on that redemption form. A. Yes, I did.

(629) Q. Why did you place them on that? A. For the same reason that I said before.

Q. Was anyone ever introduced to you at the bank as David Chernoff? A. No.

Q. Specifically, I ask you did Irving Mishel ever introduce anyone to you— A. No.

Q. —as David Chernoff? A. No.

Q. In that connection, is that the name on Government's Exhibit 8, David Chernoff? A. That's right.

Q. Just above where it says "Write signature"? A. Yes.

Q. Was this signed in your presence? A. No.

Q. Were those bonds that you looked at, Government's Exhibits 7 and 8, signed in your presence? A. No, sir.

Q. I show you Government's Exhibit 7A in evidence and ask you if anyone was ever introduced to you as Blanche Chernoff. A. No.

(630) Q. Do you know anyone by that name? A. No, sir.

Q. Did anyone on either of those days present themselves as either David or Blanche Chernoff? A. No, sir.

Q. On Government's Exhibit 8A in evidence the name Thomas Young is printed in ink above the printed notation right on the form itself, "Identification."

Was that signed in your presence? A. No.

Q. Was anyone presented to you as Thomas Young? A. No.

Q. Do you know anyone by the name of Thomas Young? A. No, sir.

Q. Did Mishel present anyone by the name of Thomas Young to you? A. No, sir.

Q. Do you recall, Mr. Lucey, about six months after you cashed the last bond in the Chernoff bonds having a conversation at the bank with Agent Sershen of the Secret Service? A. Yes, I do.

Q. I do not want the substance of the conversation, but about how long did you speak with him on that day? (631) A. About ten or twenty minutes, I guess.

Q. Did he interrogate you with respect to the cashing of the bonds that you cashed registered in the name of Chernoff? A. Yes, he did.

Q. Where did he go when he left you?

Mr. Rosenblum: I object to the last question—he is incorporating, in effect, the conversation—unless it was in the presence of the defendant.

Mr. Hallinan: I just want to get the subject matter.

The Court: I will overrule the objection.

Mr. Rosenblum: Exception.

Q. Where did he go when he left you? A. Mr. Miller's desk.

Q. How long did he stay there, if you recall? A. About ten minutes.

Q. Do you know where he went from there? A. After he left Mr. Miller's desk he left the bank.

Q. Thereafter, did you have a conversation with Mr. Miller? A. Yes. He called me over to his desk a couple minutes after he left and he asked me what he was talking about.

(632) Q. What who was talking about? A. What Mr. Sershen was talking about. I told him, "Those were the bonds that you sent over with Kennedy to cash the day that Mishel was there."

Q. What did Mr. Miller say? A. He said he didn't remember them.

Q. I have asked you abouf Blanche and David Chernoff. Was anyone ever introduced to you as Nat Chernoff?

Q. In particular did Irving Mishel ever introduce anyone to you as Nat Chernoff? A. No, sir.

Q. Do you recall what form the redemption forms came in? A. In pad form.

*James J. Lucey, Jr.—for Government—Direct*

Q. And where were these pads kept? A. Well, the tellers had a pad, and they are kept up in the stationery room.

Q. Did you ever give a pad full of these redemption forms to Mishel? A. No, sir.

Q. Did you ever give a pad full of these redemption forms to anyone? A. No, sir.

(633) Q. Apart from the conversation that you have testified to with Mr. Miller about the cashing of these bonds, did Mr. Miller discuss with you at any other time the matter of the cashing of the Chernoff bonds? A. No, sir.

Q. Did anyone at the bank on Mr. Miller's behalf discuss these matters with you? A. No, sir.

Q. Did anyone from the law firm of Dorf & Levy ever discuss the cashing of the Chernoff bonds with you? A. No, sir.

Q. Specifically, I ask you did Mr. Dorf discuss it with you? A. No, sir.

Q. Did Mr. Levy discuss it with you? A. No, sir.

Q. Did a man from their office by the name of Mr. Weiss ever discuss it with you? A. No, sir.

Q. While you were at the Pennsylvania Exchange Bank in 1949 and 1950, was there a definite procedure with respect to the mailing out of the bank of letters? A. Yes.

(634) Q. Would you tell the Court and jury what that procedure was, please? A. Well, one of the secretaries would gather the mail from the different departments, seal it and stamp it up, and the floorman would bring it over to the Rockefeller Plaza Post Office for mailing.

Q. And mail it there? A. Yes, sir.

Q. Is that post office right in the vicinity of the 48th Street Branch of the bank? A. It is across the street and down a flight of stairs.

Mr. Hallinan: You may inquire.

Cross-examination by Mr. Rosenblum:

Q. You cashed the last of the Chernoff bonds, didn't you? A. Whether it was the last, I don't know.

Q. That is, in point of time do you know whether the bonds which you cashed were the last ones cashed at the bank? A. No, I don't.

Q. You have no knowledge of it? A. (Witness shakes head.)

Q. Would you know whether or not on any occasion (635) prior to the time that you cashed these bonds, as to whether or not Mr. Mishel introduced a man by the name of Chernoff to Mr. Miller?

Mr. Hallinan: I will object to this, your Honor. I think this goes to a very important matter which I did not develop, and I would seriously request that this be restricted to another time.

The Court: I will let him answer.

(To witness) If you know of your own knowledge.

The Witness: Would you repeat the question?

The Court: Read the question back.

(Question read.)

A. No.

Q. You are saying cashing the bonds what you did was to check the bond register, and seeing there were bonds cashed in the name of Chernoff previously, you then cashed these after getting the bonds from Mr. Kennedy the way you have described?

Mr. Hallinan: I object to that as not including all the witness said that made his determination possible at that time.

The Court: Will you read the question back?

Mr. Hallinan: The objection is I object to the form of the question.

(636) (Question read.)

The Court: Well, I will sustain the objection as to form.

*James J. Lucey, Jr.—for Government—Cross*

Q. You say Mr. Kennedy came to you on the occasions you have described and said to you what you have testified; is that right? A. Yes, sir.

Q. And at that time he gave you on the first occasion a bond and a redemption form; is that right? A. Yes, sir.

Q. And you then checked the bond register and found that there were bonds in the name of Chernoff previously cashed? A. Yes, sir.

Q. And then you cashed these bonds? A. That's right.

Q. And you say that you put the initials "J. M." on it, that designating the source from which—that being to you the name of the person who sent the bonds through Mr. Kennedy? A. That's right.

Q. And the same applied to the next cashing; is that right? A. Yes, sir.

(637) Q. And are those redemption forms that you identified, the last two, 7 and 8——

Mr. Hallinan: 7A and 8A.

Q. —7A and 8A in exactly the same condition that they were in at the time you received them? A. Yes, sir.

Q. Excepting that you added the initials "J. M."? A. And I put the numbers on the back of one of them.

Q. And these redemption forms, all of the redemption forms, were available to Mr. Miller at all times? A. Yes.

Q. And you say that today these two redemption forms with the initials "J. M." on it are exactly in the same condition as the time they last left your hand? A. Yes.

Mr. Rosenblum: I have no further questions.

The Court: Anything else?

Mr. Hallinan: Just one more question.

Re-direct examination by Mr. Hallinan:

Q. When you put the initials "J. M." on, Mr. Rosenblum asked you did that indicate the source of the transaction. Did it also indicate the authority on which you relied to cash those bonds? (638) A. Yes.

*Colloquy of Counsel*

Mr. Hallinan: No further questions.

The Court: All right, Mr. Lucey.

(Witness excused.)

Mr. Hallinan: I find myself without witnesses, your Honor, a very embarrassing situation, to say the least.

The Court: We will start tomorrow morning at 10.30. They are more essential than you are. Don't discuss the case. 10.30 tomorrow morning.

(Adjourned to October 24, 1956, at 10.30 o'clock a. m.)

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(639)

New York, October 24, 1956;
10.30 o'clock a. m.

Trial resumed.

(The following proceedings took place in the absence of the jury.)

Mr. Hallinan: Before I call my first witness I would like to go over with the jury, briefly, instead of passing them around, the redemption forms.

The Court: All right.

(Jury in box.)

The Court: All right, Mr. Hallinan, go ahead.

Mr. Hallinan: With your Honor's permission, rather than passing all of these around, I should like to just go over them briefly.

The Court: Are you in a position now to go over the bonds, too?

Mr. Hallinan: Yes. May I sit down for just a minute please.

The Court: You remember, you looked at the bonds before we had all the entries on them identified. (640) And we can go ahead now.

(To Mr. Hallinan) Do you want a recess for a minute?

Mr. Hallinan: Yes, please.

The Court: All right. Why don't we take a brief recess just for a few minutes. You can go back in the juryroom.

(Jury retired to the juryroom.)

The Court: We will take a five or ten-minute recess. You can go ahead when you are ready.

(Short recess.)

(The following proceedings took place in the absence of the jury.)

The Court: Before the jury comes back in, I had a chance to complete my work on the two statements that Mr. Hallinan had given to me.

I am disposed to give one of them to the defendant. I am not going to give the defendant the master statement because I don't think there is any material inconsistency that would be worthy of our attention and it does have many things in it that are unrelated to this case altogether.

So I am going to mark the so-called master statement Court's Exhibit 3 and seal it.

(641) (Marked Court's Exhibit 3.)

The Court: The second statement is a statement of February 28, 1955, regarding this conversation with Wissenfeld which you cross-examined him on. I don't think it is material, but inasmuch as I don't see anything in here that could prejudice the Government for you to have, I would like for you to see the statement, and then if you want to ask for any relief on the basis of it we can pass on it rather than my keeping it secret from you. So we will mark it Court's Exhibit 4 for identification

and give it to Mr. Rosenblum, or if you have a copy you can give that to him, or look at the original. You decide whether you think it is important enough to get a photostat, or whatever you want.

Do you want to look at it? Is it something you want to look at, or shall we go ahead? Maybe you can look at it while Mr. Hallinan is explaining the documents to the jury.

Mr. Rosenblum: No, I would rather hear it.

The Court: You want to hear that. The only thing, if there is anything you wanted——

Mr. Rosenblum: I will let Mr. Perry look at it now.

(642) The Court: All right. We will get the jury back in then.

(Jury enters courtroom.)

The Court: All right, I guess we can start.

Mr. Hallinan: With the Court's permission, I would like to go over both the redemption forms and the bonds themselves.

The Court: All right.

Mr. Hallinan: I think you will recall that Government's Exhibit 1-A is the redemption form accompanying the first bond that was cashed, and it has above where it says "Write signature"——

Mr. Rosenblum: Might I suggest, if your Honor please, that whatever is said about the particular item be not for instance as Mr. Hallinan said, "It accompanied a particular thing."

He is now talking about the evidence.

Mr. Hallinan: I will follow that gladly.

The Court: Do not make it too hard for us to get a simple understanding. Go ahead. If you can accommodate Mr. Rosenblum, fine; if not, don't worry about that.

Mr. Hallinan: Government's Exhibit 1-A is a

redemption form and it is signed with the name (643) Nat Chernoff.

Government's Exhibit 1 in evidence is the bond which was cashed on December 29, 1949, and it is registered in the name Nat and Blanche Chernoff, and on the back it is signed Nat Chernoff.

Government's Exhibit 2-A is a redemption form with the name Nat Chernoff on that portion above "Write signature" and also the name "Miller" in handwriting on the face of that.

Government's Exhibit 2 are several bonds registered in the name of Mrs. Blanche Chernoff or Nat Chernoff. I won't go through these individually, but most of the bonds in this group are the same. On the back they are similar to this last one in the group. On two lines they are signed Nat Chernoff.

Government's Exhibit 3-A is the redemption form with the amount entered and the name Nat Chernoff signed twice.

The Court: Can everybody see them or would you like to have them passed around?

A Juror: No, I can't see it.

The Court: Why don't you pass Exhibits 1 and 1-A around. It won't take long. Then 2 and 2-A and then go ahead and discuss them as you go along. (644) Start off by giving them 1 and 1-A now.

Mr. Hallinan: I won't repeat anything about these.

The Court: Just pass that and then follow it right up with 2 and 2-A.

(Government's Exhibits 1 and 1-A handed to the jury by Mr. Hallinan.)

The Court: You can do it right now. The foreman is ready for the next one.

(Government's Exhibits 2 and 2-A handed to the jury by Mr. Hallinan.)

(Government's Exhibits 3 and 3-A handed to the jury by Mr. Hallinan.)

The Court: Have you given them 3?

Mr. Hallinan: Yes.

The Court: Did you call their attention to——

Mr. Hallinan: Yes.

4-A is a redemption form signed twice Nat Chernoff, and 4 are bonds registered in the name of Mrs. Blanche Chernoff or Nat Chernoff, cashed on January 30 at the bank, and signed on the back Nat Chernoff twice (handing to jury).

5-A is a redemption form signed in the name Nat Chernoff and Thomas Young above that portion which (645) reads "Identification"; and 5 are the bonds registered in the name of Blanche, some of them Steven or Nat Chernoff, and signed on the back Nat Chernoff (handing to jury).

6-A is a redemption form signed twice Nat Chernoff, and the identification above that portion which reads "Identification" is in the name Thomas Young, and the bonds are registered in the name of Blanche or Nat Chernoff and signed on the back Nat Chernoff (handing to jury).

7-A is a redemption form in the name Blanche Chernoff, and it has on it the initials "JM"; and the bonds in 7 are registered in the name of David Chernoff or Blanche Chernoff, and I think there are one or two in there registered in the name Marilyn or Blanche Chernoff, and they are signed on the back Nat Chernoff, some are signed Blanche Chernoff along with the name Nat Chernoff (handing to jury).

8-A is a redemption form signed David Chernoff, has above "Identification" Thomas Young and the

initials "JM" on that redemption form. Exhibit 8 consists of one single bond registered in the name of Mr. David Chernoff (handing to jury).

(646) The Court: All right. Do you want to get the next witness in?

Mr. Hallinan: Yes. Mr. Heddesheimer.

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FRED HEDDESHEIMER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Heddesheimer, by whom are you employed? A. Pennsylvania Exchange Bank.

Q. Keep your voice up.

The Court: Talk to the last juror over there.

A. Pennsylvania Exchange Bank.

Q. How long have you been so employed? A. 17 years.

Q. In what capacity are you presently employed? A. Auditor.

Q. As auditor, are you familiar with the various records kept by the bank? A. Yes.

Q. I show you Government's Exhibits 10 and 11. 10 is a signature card in the name of Thomas Young and I ask you if that is a record and document kept in the regular course of business by the Pennsylvania Exchange Bank?

(647) A. Yes.

Q. Is it the regular course of business of that bank to keep that record? A. Yes.

Q. I ask you the same questions with respect to Government's Exhibit 11, which is a signature card in the name of John Case? A. Yes, the same thing.

Mr. Hallinan: May we have this marked 19 for identification, please.

(Government's Exhibit 19 marked for identification.)

Q. Mr. Heddesheimer, I show you Government's Exhibit 19 for identification and ask you what it is? A. It is a correspondence file on the matter of Nat Chernoff, record of the bank.

Q. Is it from the Pennsylvania Exchange Bank? A. From the Pennsylvania Exchange Bank.

Q. Is that kept in the regular course of business by the bank? A. Yes.

Q. And is it the regular course of business of the bank to keep that record? A. Yes.

(648) Mr. Hallinan: May the record indicate that I am now going to remove some documents from Government's Exhibit 19 for further identification?

Mr. Rosenblum: May I see the entire file before it is taken apart, whatever you showed to the witness?

Mr. Hallinan: You certainly may. This is one you have seen before.

Mr. Rosenblum: You don't know what I have seen or what I haven't seen. I don't think any comment is necessary.

For your information I may tell you you are wrong about the statement——

The Court: I can't hear you.

Mr. Rosenblum: For his information I am telling him he is wrong about the statement he made in front of the jury because I don't see this full file.

The Court: Well, all right; go ahead.

Mr. Rosenblum: Should I go through this quickly before the document is offered? I will then read that paper.

The Court: Yes.

Mr. Rosenblum: I will just go through it (649) quickly. I think it will save some time.

The Court: Fine.

(A pause.)

The Court: All right.

Mr. Hallinan: I don't know whether I had finished my statement.

May the record indicate that I am now removing from Exhibit 19 for identification certain documents.

May we have this marked 20, that letter.

(Government's Exhibit 20 marked for identification.)

Mr. Hallinan: And that one 20-A.

(Government's Exhibit 20-A marked for identification.)

Mr. Hallinan: That one 20-B.

(Government's Exhibit 20-B marked for identification.)

Mr. Hallinan: 21.

(Government's Exhibit 21 marked for identification.)

Q. Mr. Heddesheimer, I show you Government's Exhibit 20 for identification and ask you what it is? A. It is a letter from the Treasury Department, dated July 19, 1950,

addressed to James W. Miller, (650) President, Pennsylvania Exchange Bank, signed Charles D. Peyton, Deputy Commissioner in charge..

Q. Was that document kept in the regular course of business by the bank? A. Yes.

Q. Was it the regular course of business of the bank to keep that document? A. Yes.

Q. I show you Government's Exhibits 20-A and 20-B for identification and ask you what they are? A. It is a schedule of paid bonds.

Q. Indicating 20-A. A. In the matter of Nat Chernoff. Another schedule of bonds in the matter of Nat Chernoff.

Q. 20-B. Indicating 20-B. A. 20-B.

Q. Are both of those documents kept in the regular course of business by the bank? A. Yes.

Q. Was it the regular course of business of the bank to keep those documents? A. Yes.

Q. Now I show you Government's Exhibit 21 for identification and ask you what it is? (651) A. It is a circular letter from the Treasury Department, Washington, dated December 19, 1947.

Q. Was that kept by the bank in the regular course of business? A. Yes.

Q. Was it the regular course of business of the bank to keep that record? A. Yes.

Mr. Hallinan: The Government offers Exhibits 20, 20-A, 20-B, 21.

(652) Mr. Hallinan: Mr. Perry would like a stipulation which I think I have covered already, but I appreciate their position and we will make it unmistakable here.

The Government will stipulate that each document contained in Government's Exhibit 19 for identification is a document kept in the regular course of business by that bank and it is the regular

course of business of that bank to keep that record. This stipulation has nothing to do with relevance or materiality, just as to the——

Mr. Perry: Judge, it will avoid, perhaps, the necessity of recalling the witness.

Thank you.

Mr. Hallinan: There is no objection.

(Government's Exhibits 20, 20-A, 20-B and 21 for identification received in evidence.)

Mr. Hallinan: I have no further questions of this witness.

Mr. Rosenblum: I have no questions.

(Witness excused.)

Mr. Hallinan: Before we call the next witness, may I read these exhibits to the jury, your Honor, pertinent portions of them?

(653) The Court: Yes.

(Mr. Hallinan read Government's Exhibit 20 to the jury.)

Mr. Hallinan: Briefly, these two exhibits, 20-A and 20-B, are schedules of the bonds attached to that letter and referred to in the letter I have just read to you.

(Mr. Hallinan then read from Government's Exhibit 21 to the jury.)

Mr. Hallinan: Mrs. Skotchdopole.

ELIZABETH SKOTCHDOPOLE, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mrs. Skotchdopole, what is your present occupation? A. I am a housewife.

Q. Were you at one time employed at the Pennsylvania Exchange Bank? A. Yes, I was.

Q. And will you give us the period of your employment at that bank? (654) A. I worked at the Pennsylvania Exchange Bank from the latter part of October 1951 until the the end of June 1952.

Q. And in what capacity were you employed at the bank while you were there? A. I was secretary to Mr. Miller, the defendant.

Q. Do you see Mr. Miller in court now? A. Yes, I do.

Mr. Hallinan: May the record indicate that the witness has identified the defendant.

Q. Will you describe briefly for the Court and jury what your duties were as secretary to Mr. Miller? A. Well, as secretary to Mr. Miller I took his dictation and transcribed the dictation, I did the filing for Mr. Miller and answered his telephone, and I received callers.

(655) Q. Now will you tell us, as you recall, was there a definite procedure for mailing matter out of the bank while you were employed as Mr. Miller's secretary? A. Well, as I recall, when I finished my transcribed dictation I placed it in a folder and placed it on Mr. Miller's desk for signature, and when he, in turn, signed any correspondence I took it back to my desk, folded it and placed it in an envelope and placed it in a file box on my desk for the outgoing mail which was, in turn, picked up by a clerk, and she took it to her desk and sealed it and mailed it.

(Government's Exhibits 25 and 26 marked for identification.)

Q. Mrs. Skotchdopole, I show you Government's Exhibit 25 for identification and I ask you what it is? A. Well, Government's Exhibit No. 25 is a copy of a letter dictated by Mr. Miller, the defendant, on December 26, 1951, to Mr. E. F. Bartelt, the Fiscal Assistant Secretary of the Treasury Department, Fiscal Service, Washington, D. C.

Q. Dictated to whom? A. To me.

Q. Did you tell us the date? A. December 26. (656) Yes, sir.

Q. I show you Government's Exhibit 26 for identification and ask you what that is? A. Government's Exhibit No. 26 is a copy of a letter dictated to me on April 4, 1952, by Mr. James W. Miller, the president, defendant, to Mr. Charles D. Peyton, Deputy Commissioner in charge of the Treasury Department, Fiscal Service, in Chicago.

Mr. Hallinan: The Government will offer both of these in evidence (handing to Mr. Rosenblum).

(Government's Exhibits 25 and 26 for identification received in evidence.)

The Court: All right.

Q. Mrs. Skotchdopole, I ask you to look once again at Government's Exhibits 25 and 26 and tell the Court and jury if your initials are typed in at the bottom of both of those exhibits? A. Yes, my initials appear on both Exhibits 25 and 26.

Q. What initials are those? A. E. D.

Q. Was that your maiden name? A. Yes.

Q. What do those initials stand for? (657) A. Elizabeth Driscoll.

Q. I show you Government's Exhibit 22 for identifica-

tion and I ask you to compare it with Government's Exhibit 25 in evidence and I ask you if Government's Exhibit 22 for identification is a photostatic copy of the original of Government's Exhibit 25? A. Government's Exhibit No. 22 is a photostatic copy of the original of Government's Exhibit No. 25.

Q. Does Mr. Miller's signature appear on Government's Exhibit 22 for identification? A. Yes, Mr. Miller's signature appears.

Q. I ask you to look at Government's Exhibit 26. Before we pass Goverment's Exhibit 22, your initials are not on that letter; is that correct? A. Yes, they are. Oh, that is "Noted." I am sorry. That says "Noted." I beg your pardon. No, they do not appear.

Mr. Rosenblum: Will you keep your voice up? I can't hear you.

A. I am sorry. My initials do not appear on the photostatic copy of the original.

Q. I show you Government's Exhibit 26 in evidence which you have identified and 23 for (658) identification. I ask you to compare those two exhibits and tell the Court and jury if 23 is a photostatic copy of the original of Government's Exhibit 26? A. Government's Exhibit No. 23 is a photostatic copy of the original of Government's Exhibit No. 26.

Q. And do your initials appear on Government's Exhibit 23 for identification? A. No, they do not.

Mr. Hallinan: The Government offers 22 and 23.

Mr. Rosenblum: May we have all four again, please?

Mr. Hallinan: Yes (handing).

Mr. Rosenblum: Are you putting all four in, Mr. Hallinan?

Mr. Hallinan: Two are in. I am putting in the remainder.

Mr. Rosenblum: I have no objection to all four. I mean, two are in already. No objection.

(Government's Exhibits 22 and 23 for identification received in evidence.)

The Court: All right.

Q. Now, Mrs. Skotchdopole, was the regular mailing (659) procedure followed with respect to Government's Exhibits 22 and 23? A. Yes, I believe the regular mailing——

Mr. Rosenblum: I object to it at the moment, not knowing what the word "regular" is that is referred to.

Mr. Hallinan: She has testified as to the procedure.

Mr. Rosenblum: Oh, you mean the one she previously——

The Court: Was the procedure as you described followed?

The Witness: Yes.

Mr. Rosenblum: I will withdraw my objection.

Q. Did you answer the question? A. Yes, it was the procedure followed.

Mr. Hallinan: I have no further questions. I should like to read both of these exhibits to the jury, your Honor.

The Court: All right.

(Mr. Hallinan read Government's Exhibits 22 and 23 to the jury.)

*I. Alfred Levy—for Government—Direct*

(660) Mr. Halliman: You may inquire.
Mr. Rosenblum: I have no questions.
(Witness excused.)
Mr. Hallinan: Mr. Levy.

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I. ALFRED LEVY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Levy, what is your occupation? A. I am a lawyer.

Q. Are you in a firm? A. I am in the firm of Dorff & Levy.

Q. And how long have you been in that firm? A. Since 1920 or '21; '21, I think.

Q. Does your firm represent in various matters or handle various matters for the Pennsylvania Exchange Bank? A. Yes, sir.

Q. How long have you represented them? A. Since 1927.

Q. Do you recall sometime in May of 1952 being called upon by Mr. Miller to write a letter to the Treasury Department in relation to the cashing of certain bonds which were cashed at the bank? A. Yes.

(661) Mr. Hallinan: Mark this 27, please.

(Government's Exhibit 27 for identification marked.)

Mr. Hallinan: 28.

(Government's Exhibit 28 for identification marked.)

Q. Mr. Levy, I show you Government's Exhibit 27 for identification. I ask you what it is (handing to witness). A. It is a letter written by Mr. Miller to myself on the subject of Nat Chernoff.

Q. On what date? A. On May 13, 1952.

Q. Is Mr. Miller's signature on that memo? A. Yes, sir.

Q. I show you Government's Exhibit 28 for identification and ask you what it is (handing to witness). A. It is a memorandum, written memorandum, to me from Mr. Miller dated May 21, 1952, on Nat Chernoff family.

Mr. Hallinan: The Government offers 27 and 28.

(Pause.)

Mr. Hallinan: Mr. Levy, do you have your file (662) with you?

The Witness: Mr. Dorf has it.

Mr. Hallinan: Could the witness step out long enough to get the file from Mr. Dorff?

The Court: Sure.

(Witness leaves stand and returns.)

Mr. Rosenblum: No objection.

The Court: Received.

(Government's Exhibits 27 and 28 for identification received in evidence.)

Mr. Hallinan: May I read both of these to the jury?

The Court: Yes.

(Mr. Hallinan reads Government's Exhibits 27 and 28 to the jury.)

Q. Now, Mr. Levy, do you have in your file a copy of a letter sent by Mr. Bartelt to Mr. Miller and dated May 20, 1952? A. Sent by Bartelt to Miller?

Q. Yes.

Mr. Rosenblum: May what?

Q. I am sorry. I gave you the date of the letter. Yes. Dated May 20, 1952 is the date on the letter. A. May 20, yes. I have a copy of a letter dated (663) May 20, 1952, sent to Mr. Miller, president, Pennsylvania Exchange Bank, signed, purporting to be signed by E. F. Bartelt.

Mr. Hallinan: May we have this marked 28A, please?

(Government's Exhibit 28A marked for identification.)

Mr. Hallinan: The Government will offer Government's Exhibit 28A.

(Government's Exhibit 28A for identification received in evidence.)

Mr. Hallinan: May I read this to the jury?

The Court: Yes.

(Mr. Hallinan reads Government's Exhibit 28A to the jury.)

Q. Now, pursuant to these requests of Mr. Miller which you have identified and which we have read to the jury, did you sometime thereafter dictate a letter to the Treasury Department on behalf of Mr. Miller? A. On behalf of the bank.

Q. Did the bank itself call you or send you these communications and requests? A. The bank sent it through Mr. Miller, but it was on behalf of the bank that I sent that letter.

(664) Q. And who else at the bank requested that you write this letter? A. Nobody.

Q. Did you dictate a letter in response to this request, Mr. Levy? A. I did.

Q. Did you ever see that letter in final form? A. Yes, recently.

Q. No, at that time did you? A. Oh, no, no. I dictated that letter in the morning of June 4. I sailed for Europe on the Queen Elizabeth, I think it was the afternoon on that same day.

Q. And did you turn the matter over to anyone else to complete? A. To my partner, Mr. Dorf.

Q. Do you remember in 1952 whether or not your office had a procedure with respect to outgoing mail. A. We had the same procedure then that we have now. Do you want it?

Q. Yes, please. Would you tell the Court and jury what that procedure was? A. If I am writing a letter I dictate it to my secretary, she brings it in when she finishes it. I go over the letter, sign it, return it to her, and she (665) is supposed to put it in the mail box.

Q. What mail box? A. There is a chute right outside our office, United States Post Office chute.

Mr. Hallinan: You may inquire.

Mr. Rosenblum: I have just one question.

Cross-examination by Mr. Rosenblum:

Q. Are you retained by Mr. Miller personally or by the bank? A. No, sir; by the bank.

Q. Has that been the same for the entire period from 1927 up to the present time? A. I am general counsel for the bank from 1927 or '28—I don't recall—until this present date.

Q. And always the same? A. Never represented Mr. Miller that I recall in anything.

Q. In this particular matter you were acting for the bank? A. I was acting for the bank.

Mr. Rosenblum: No further questions.

*I. Alfred Levy—for Government—Re-direct*

Re-direct examination by Mr. Hallinan:

Q. Did you ever get a letter from a thing, person, (666) substance called the bank?

Mr. Rosenblum: I object to the form of that question. I do not understand it.

The Court: I will let the facts stand as they are. I will sustain the objection.

Q. The bank in this case operated through Mr. Miller, did it not? A. It operated through all the officers of the bank.

Q. Mr. Levy, my question is simple. The bank in this case—I am not talking about your vast experience in the bank—the bank in this case operated through Mr. Miller, did it not? A. Mr. Miller signed the letters and sent me the letters, yes.

Mr. Hallinan: That is all.

(Witness excused.)

The Court: Are you going to start another witness now?

Mr. Hallinan: I would like to put Mr. Dorff on, but I think he will continue over.

The Court: If he will continue over, we will break now. If you think you can finish him, fine.

Mr. Hallinan: I will try and hurry along as much as possible. Maybe I can finish him in fifteen (667) minutes.

The Court: There is no reason to push you. We will start with him then at 2 o'clock. It does not make any difference.

Mr. Hallinan: All right, fine. He is a lawyer.

The Court: All right, put him on.

Mr. Hallinan: Mr. Dorff, please.

MAX DORFF, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Let us see if we can proceed quickly. Are you a partner of the Mr. Levy who was just in here? A. Yes, sir.

Q. And that firm has represented the Pennsylvania Exchange Bank for a number of years? A. Yes, sir.

Q. About twenty-five, is it? A. Upwards of twenty-five years.

Q. Did there come a time in June of 1952, when Mr. Dorff asked you to carry through with a matter that he had started for the Pennsylvania Exchange Bank? A. You said Mr. Dorff. I think you mean——

Q. Mr. Levy, yes. You are right. (668) A. Yes.

Q. Did you at that time send a copy of a letter over to Mr. Miller at the Pennsylvania Exchange Bank?

Mr. Rosenblum: May we have the witness tell us what he did.

Q. What did you do, Mr. Dorff?

Mr. Rosenblum: I realize we want to help Mr. Dorff, but I can't follow the questions. It is too quick. I do not think the witness should mind coming back if we are not finished.

The Court: Tell us what you did, Mr. Dorff.

A. On June 4, 1952, my partner, Mr. Levy, dictated a letter to Mr. E. F. Bartelt, Fiscal Assistant Secretary, Treasury Department, Fiscal Service, Washington, D. C. Mr. Levy left that day, I believe, for Europe and asked me to sign the letter in the firm name and send it over to the bank, which I did.

Mr. Hallinan: Will you mark it 29, please?

(Government's Exhibit 29 for identification marked.)

Q. I show you Government's Exhibit 29 for identification and I ask you what this is, Mr. Dorff (handing to witness). A. Yes, sir, that's a copy of the letter.

(669) Q. Of what letter? A. The letter that I signed Dorff & Levy and sent over to Mr. Miller.

Q. Did both the original and copy go to Mr. Miller? A. I believe the original and the copy went over to Mr. Miller.

Mr. Hallinan: The Government will offer Government's Exhibit 29.

(Mr. Hallinan hands document to Mr. Rosenblum.)

Mr. Hallinan: Mark this 29A, please.

(Government's Exhibit 29A for identification marked.)

Mr. Rosenblum: No objection.

(Government's Exhibit 29 for identification received in evidence.)

Q. I show you Government's Exhibit 29A for identification and ask you what it is (handing to witness). A. That is the memorandum sent over by me to Mr. Miller accompanying this letter of June 4, 1952.

Q. Accompanying Government's Exhibit 29? A. The one you just showed me.

Mr. Hallinan: The Government will offer 29A.

Mr. Rosenblum: No objection.

(Government's Exhibit 29A for identification (679) received in evidence.)

The Court: All right.

Q. Mr. Dorff, I ask you to look once again at 29A and tell me if you can determine from that whether or not you sent the original letter over to Mr. ~~Miller?~~ —A. I would say yes.

Mr. Hallinan: May I read 29 and 29A to the jury, your Honor?

The Court: Yes. Do you want to hold the witness while you do that?

Mr. Hallinan: Yes. The witness' testimony—I would much rather do it by reading each exhibit by exhibit.

The Court: All right. Go ahead.

(Mr. Hallinan read Government's Exhibit 29 to the jury.)

The Court: Are you going to read the other exhibit?

Mr. Hallinan: I am sorry. Yes.

(Mr. Hallinan read Government's Exhibit 29A to the jury.)

Q. Are those your initials "M. D."? A. Yes.

Q. You sent this along with the other exhibit (670a) I have just read, is that correct? A. Yes, sir.

The Court: We will suspend now until 2.15. Don't discuss the case.

(Jury retired.)

The Court: All right. 2.15.

(Recess to 2:15 p. m.)

(671)

AFTERNOON SESSION

(Jury in box.)

MAX DORFF resumed.

Direct examination continued by Mr. Halliman:

Q. Now, Mr. Dorff, going over Exhibits 29 and 29A, which were the copy of the letter you sent to Mr. Miller and the memorandum which accompanied that letter, thereafter did you hear from Mr. Miller? A. Yes, sir.

Q. Do you recall when that was? A. From these records, it was the following day.

Q. And how did you hear from him? A. Pardon.

Q. How did you hear from him? Did he come to you personally? A. Mr. Miller telephoned me and asked me to change part of the second page of the letter that was sent over to him on June 4th.

Q. And what did you do? A. I changed it accordingly and then sent him the rewritten page too with that correction in it.

Q. What did he ask you to change on that letter? A. He asked me to change the last three lines of the first paragraph on page 2 of that June 4th (673) letter and in place of that put in a different sentence.

Q. What was the change? Tell us what the change was.

The Court:- Tell us what he struck out and what you put in.

A. Yes, sir. On the fifth line of the second page of that letter of June 4th he asked me to strike out beginning with with the word "and" on the fifth line and running down to the end of that paragraph.

Q. Read that.

The Court: Read it to us.

A. Reading as follows:

"And identified the person who cashed the bonds as the one who claimed he was Mr. Chernoff and who was introduced to Mr. Miller as Mr. Chernoff by Mr. Mishel."

And in place of that to rewrite as follows:

"And we have been informed that the person who cashed the bonds was subsequently indicted."

Q. Did he indicate in the telephone conversation that he had received the draft that you sent him? A. Nothing was said about it. He just asked me to make that change.

(673) Mr. Hallinan: Mark this as Exhibit 30.

(Marked Government's Exhibit 30 for identification.)

Mr. Hallinan: The Government will offer 30 in evidence.

Mr. Rosenblum: No objection.

The Court: Received.

(Government's Exhibit 30 for identification received in evidence.)

Mr. Hallinan: May I circulate this among the jury, if your Honor please?

The Court: Yes.

Whose handwriting is that?

The Witness: Mine.

The Court: Your handwriting?

The Witness: Yes, sir.

(Mr. Hallinan hands to jury.)

Q. Now, after that change was made, did you thereafter, pursuant to the request, send the changed page 2 to Mr. Miller? A. I did.

Q. Do you recall when that was? A. June 5.

Q. Do you recall whether you sent along an accompanying memo with it? (674) A. I did.

(Government's Exhibits 31 and 31-A marked for identification.)

Q. I show you Government's Exhibits 31 and 31-A for identification and ask you if this is the changed page 2 and if 31-A is the accompanying memorandum with that that you sent to Mr. Miller? A. Yes, sir.

Mr. Hallinan: The Government offers 31 and 31-A.

Mr. Rosenblum: No objection.

The Court: Received.

(Government's Exhibits 31 and 31-A for identification received in evidence.)

Mr. Hallinan: May I read these, briefly, your Honor?

The Court: Yes.

Mr. Hallinan: I will read 31-A first.

(Mr. Hallinan reads Government's Exhibit 31-A to the jury.)

Mr. Hallinan: Then the initials M. D. are on there.

Q. Are those your initials, Mr. Dorff? A. They are.

(675) (Mr. Hallinan reads Government's Exhibit 31 to the jury.)

Q. Now I show you Government's Exhibit 24 for identification and I ask you if this is the final form of the letter that you sent to Mr. Miller? A. Yes, sir.

Q. And whose signature is on the letter? A. That is mine.

Q. What does it say? A. Signature?

Q. Yes. A. Dorff & Levy.

Q. And you signed that? A. Yes, sir.

Q. Now after the last document that you have testified that you sent over to Mr. Miller, did you get anything back after that? A. After that——

Q. No. In connection with these documents. Did you receive this letter back from Mr. Miller? A. I don't recall receiving it back.

Mr. Hallinan: The Government offers Exhibit 24.

(676) Mr. Rosenblum: No objection.

The Court: Received:

(Government's Exhibit 24 for identification received in evidence.)

Mr. Hallinan: You may inquire.

The Court: Shouldn't Exhibit 24 be shown to the jury?

Mr. Hallinan: It has in effect. The entire first page was read by me.

The Court: I think they should see every document that has gone in. They have already had the content read to them, and they can look at that briefly. You can go ahead, Mr. Rosenblum.

Mr. Rosenblum: I would just as soon wait.

(Government's Exhibit 24 handed to jury by Mr. Hallinan.)

A Juror: Could two look at it at the same time?

The Court: Surely.

(To Mr. Hallinan) Do you have any photostats?

Mr. Hallinan: Yes, I believe I have.

The Court: Show it to Mr. Rosenblum.

(Mr. Hallinan hands photostats of Government's Exhibit 24 to jury.)

(677) Cross examination by Mr. Rosenblum:

Q. Mr. Dorff, I hand you 29 in evidence and ask you whether or not—and I believe you testified that that is the letter in the form it was in at the time you sent it—at the time either you or Mr. Levy sent it over to Mr. Miller? A. You mean the first time?

Q. Yes. A. Yes, sir.

Q. I show you Government's Exhibit 24 and ask you whether that is the letter which was sent to the Government? A. My recollection is that 24 was sent to the bank.

Q. And then returned to you? A. No.

Q. Is that the final letter? A. I believe that is the final letter.

Q. With the change that was made? A. With the change that was made.

Q. I first ask you whether or not the first page of the letter prepared by Mr. Levy was changed at all? A. To my recollection, the first page was not changed.

Q. This is the letter you say was prepared by (678) Mr. Levy and sent over by you to Mr. Miller because he had left or was about to leave for Europe? A. That's right.

Q. Is that right? A. That's right.

Q. And the first page was not changed? A. I don't believe the first page was changed at all.

Q. The second page was changed to the extent indicated, and I think you said the words, "and identified the person who cashed the bonds"——

Let me go back a little.

"Mr. Miller testified before the grand jury regarding the theft of these bonds . . ."

And then we have the place where it is marked out:

". . . and identified the person who cashed the bonds as the one who claimed he was Mr. Chernoff and who was introduced to Mr. Miller as Mr. Chernoff by Mr. Mishel."

That was taken out and in its place the words put, "and we have been informed that the person who cashed the bonds was subsequently indicted"; right? A. Yes, sir.

(679) Q. Now you say you talked with Mr. Miller about this change on the telephone? A. That is what I said.

Q. And at the time you discussed the matter of taking out these words that I just read? A. Yes, sir.

Q. And adding the words which you have on Government's Exhibit 30 which I think you testified was in your handwriting? A. Yes, sir.

Q. Now see whether it isn't a fact that at the time when he called you by telephone did he bring to your attention the fact that he was, that Mr. Levy as he set it up in the first instance was reciting something in detail as to what he did in the grand jury and wanted to change it so that he wouldn't be violating or making some improper statement or revealing something to the extent that he shouldn't reveal it as appeared before the grand jury?

Mr. Hallinan: I object to the form. There are eight questions included in that.

Mr. Rosenblum: I will change it.

The Court: All right.

Q. Can you tell us whether or not he brought to (680) your attention the fact that as Mr. Levy prepared it it might be his revealing the details of what occurred before

the grand jury to the extent that he shouldn't? A. I don't recall whether he gave me the reason for making the change. He may have.

Q. Would you say he didn't? A. My best recollection is that he asked me to make the change. He may have given the reason to me, because——

Q. The substance wasn't changed, was it? A. Pardon?

Q. The substance wasn't changed, was it?

Mr. Hallinan: I object to the form, your Honor.

The Court: I sustain the objection.

Mr. Rosenblum: Exception.

Q. Now then, you say, then, you made as appears on No. 30 prepared by you in your handwriting— A. Yes, sir.

Q. And it was incorporated in the letter which was sent out? A. Yes, sir.

Q. Is that right? A. That is my best recollection.

(681) Mr. Rosenblum: I have no further questions.

Mr. Hallinan: No further questions.

The Court: Thank you, Mr. Dorff.

The Witness: Is Mr. Hallinan finished with me?

The Court: Yes.

(Witness excused.)

Mr. Hallinan: Edward Sweeney.

EDWARD F. SWEENEY, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Sweeney, by whom are you employed? A. I am employed by the Treasury Department, U. S. Secret Service.

Q. In what capacity? A. Special Agent.

Q. How long have you been a special agent in the Secret Service? A. 17 years.

Q. Now, on October 6, 1950, did you accompany Agent George J. Sershen of the Secret Service when he went to apprehend one Irving Mishel? A. I did, sir.

(682) Q. Now, can you recall if on that occasion when first apprehended Mr. Mishel made any statement to you or to Mr. Sershen? A. He did not, sir.

Q. Did you or did Mr. Sershen say anything to Mr. Mishel at that particular time? A. We notified him he was under arrest.

Q. Did either you or Sershen tell Mr. Mishel any of the——

> Mr. Rosenblum: I object. May we find out? May we get it from the witness what if anything was said, first, what his recollection may be, instead of leading?
>
> The Court: I think he is more interested in whether something was or was not said. All right. Go ahead, ask him in a general way.

Q. Was anything else said by you or by Sershen to Irving Mishel? A. To the definite nature I do not now recall, other than questioning concerning bonds, and I think Mr. Sershen advised him at that time that he had been identified as the individual who presented the bonds at the Pennsylvania Trust Company for negotiation.

Q. After being informed of that did Mr. Mishel (683) make any statement to you or to Mr. Sershen? A. No, sir.

Q. Now did you have occasion to visit the Pennsylvania Exchange Bank with Agent Sershen? A. I did, sir.

Q. Do you recall what day that was? A. That was a few days after Mishel was arrested, as I now understand October 10th.

Q. 1950? A. 1950.

Q. Will you tell the Court, please, who you and Agent Sershen saw at the Pennsylvania Exchange Bank on that day? A. To the best of my recollection, just prior to noon on that date, Agent Sershen and I contacted Mr. Miller, who was president of the Pennsylvania Exchange Bank. And at the time Agent Sershen asked Mr. Miller if he then could recall any further information concerning the negotiation of the Chernoff bonds.

Mr. Miller replied that he had given the matter considerable thought and that he did then recall that Irving Mishel had been into the bank on two prior occasions with bonds, and he recalled on one of the occasions that the name on the bonds was Chernoff.

(684) Agent Sershen asked him if he accepted the Chernoff bonds directly from Mr. Mishel.

He said yes, he had, but that the individual who he believed was the owner of the bonds was then in the front of the bank.

Agent Sershen asked him if—what the description was of this individual that was at the front of the bank.

And Mr. Miller replied that he didn't see him and couldn't give him a description of the individual.

Mr. —or Agent Sershen then inquired if the individual had been in once or twice with Mishel regarding negotiation.

Mr. Miller said that he could not then recall.

Agent Shershen then asked Mr. Miller if he had in-

formation concerning the redemption slips. The name I think was Thomas Young.

And at that point Mr. Miller produced the original redemption slips made out I think to Nat Chernoff and I think one or two or three or a few of them contained the name of Young.

Mr. Sershen then asked Mr. Miller if that writing contained on the bonds was in writing of (685) Young or who wrote the signature.

And Mr. Miller replied that he could not recall the incident and he believed that was a matter for the tellers.

Mr. Sershen then asked again if he could recall the description of the individual that was with Mishel in the bank at the time of negotiation.

And Mr. Miller could give no information concerning this individual.

However, Mr. Miller did state that he believed that Young was a friend of Mishel's and that Young, to the best of his knowledge, was employed at the Roth's Grill, between 47th and 48th, on the west side of Broadway.

At this particular point I asked Mr. Miller if he had a definite reason in mind as to why he didn't question the unknown in the bank, the alleged Mr. Chernoff in the bank at the time that Mr. Miller stated he was there.

And Mr. Miller replied that at the time he knew Irving Mishel well and he was doing business with him.

Agent Sershen and I then—or Agent Sershen, excuse me, then talked to the bank guard and one of the (686) tellers.

And we both proceeded to Roth's Grill and made inquiry there through the management in an effort to identify Mr. Young.

And we were informed that there was no individual there presently working nor did they have a record of anyone by that name ever employed by that company.

That is about all I can remember.

*Edward F. Sweeney—for Government Direct*

(687) Q. Getting back to the bank, before you left to go to Roth's Bar and Grill, was there anything else said to Mr. Miller by either you or Agent Sershen? A. Well, Agent Shershen inquired of Mr. Miller if that was the general practice that he used or the bank used in the negotiations of the bonds. He further asked him if at the time he had requested documentary identification of Mishel concerning Chernoff, and he said, "No" to both questions.

And then I believe that Mr. Shershen stated to him that he thought the procedure was highly irregular in accepting the bonds under those conditions.

Q. Now, on that occasion did either you or Agent Shershen show Mr. Miller a photograph of Irving Mishel? A. No, sir.

Mr. Hallinan: You may inquire.

Cross-examination by Mr. Rosenblum:

Q. Right near the end of your examination I think you said—see if I am quoting you correctly—"Then I believe that Shershen said he thought it was highly irregular." A. Yes, sir, I said that.

Q. Is that just your belief? A. No, no, it is my independent recollection (688) that that particular statement was said to Mr. Miller, but whether it was said at that particular time was the reason I so worded it, sir.

Q. I see. Where is Mr. Shershen? A. He is in the building, sir.

Q. In the building? A. Yes.

Q. You say you give us your recollection as to what occurred at the time you say you visited with Mr. Miller? A. Yes.

Q. And when was that? A. 1950, October.

Q. That is just about six years ago? A. Yes, sir.

*Edward F. Sweeney—for Government—Cross*

Q. A little past, a few days? A. Yes.

Q. Are you just testifying from recollection or are you testifying from some memorandum that you prepared at that time? A. I didn't prepare a memorandum, sir. I am testifying to the best of my recollection at this time.

Q. In other words, you are saying to us now that everything you have just testified to is something that (689) occurred six years ago and you are relying on your best recollection as to what you think occurred at that time? A. I wouldn't say that, sir. I would say that I have had a discussion with the Assistant U. S. Attorney concerning the case, and I have also discussed the case with Mr. Sershen, and we went over the story together.

Q. You went over the whole story together? A. The particular part that I just testified to.

Q. You knew, did you not, that Mr. Hallinan had no personal knowledge as to what occurred? A. Oh, I know that, sir.

Q. You understood that, did you not? A. Yes, sir.

Q. And he was telling you what other people said in discussing the story? A. No, no, I didn't say that.

Q. Well, what was it Mr. Hallinan was telling you concerning the facts that you have just testified to? A. Mr. Sershen had previously——

Q. I am asking you about Mr. Hallinan. A. Just let me finish.

Q. All right, go ahead. A. Mr. Sershen had previously discussed the case (690) in length with Mr. Hallinan, and Mr. Hallinan requested that I come from Boston to New York, at which time we discussed the case. Now, that is the refreshing that I have had on the case to this time.

Q. In other words, your refreshing consists of what you heard Mr. Sershen discuss with Mr. Hallinan? A. No, no. It is my own independent recollection plus what Mr. Sershen had also talked about with Mr. Hallinan.

Q. You mentioned Roth's Grill? A. Yes.

Q. You have no doubt that Mr. Miller told you about that, have you? A. I have no doubt at all.

Q. Right. Now, do you recall whether he told you at the time you were there that the man that Mr. Mishel had written at the time Mr. Miller was talked to with regard to the cashing of these bonds was a man who was in the employ of Mr. Mishel in Roth's Grill? A. No, sir. I believe I testified that Mr. Miller stated that Mr. Roth was a friend of Mr. Mishel's and he believed at that time that Mr. Roth was then employed at Roth's Grill.

Q. Mr. Roth was then employed at Roth's Grill? A. Mr. Ross.

(691) Q. Mr. Ross? A. His name slips my mind.

Q. See if you can think of it. A. Young. Excuse me. Mr. Young was then working at Roth's Grill.

Q. Didn't Mr. Miller tell you that the person whose bonds were being cashed was Mr. Chernoff? A. Yes, he did.

Q. And do you want this jury to understand——

Mr. Rosenblum: I withdraw it.

Q. Do you say now that he said there was a man at the front of the bank? A. Yes, sir.

Q. And that man was who—Mr. Young or Mr. Chernoff? A. He did not say.

Q. Didn't you ask him? A. Oh, I asked him.

Q. What did he say when you asked him who was at the front of the bank? I asked him why he didn't talk to the man.

Q. Please tell me whether or not you asked him as to what the name of that person was? A. He stated he didn't know. He said that Mishel had informed him that he was making a request to cash (692) the bonds for his friend.

Q. What was his name? A. He didn't say.

Q. And you did not ask him as to what name he said the friend possessed? A. Mr. Shershen asked him.

Q. It was in your presence, wasn't it? A. Yes, it was.

Q. And what did he say? A. He didn't know. He was doing business with Mr. Mishel.

Q. Is this your knowledge now? A. Yes, sir.

Q. That is your personal knowledge? A. That is my personal knowledge.

Q. You know who he was doing business with? A. That is what he told us.

Q. But did he say at the time that the bonds which were being cashed were not Mr. Mishel's? A. I don't think that question entered into it.

Q. Did he say that they were Mr. Mishel's? A. He said that Mr. Mishel had presented the bonds to him.

Q. But didn't he say he was presenting the bonds (693) which belonged to another person? A. For his friend, yes.

Q. For his friend? A. That's right.

Q. And Mr. Miller told you that at that time he had learned—that is, Mr. Miller had learned that the friend who was being discussed—that the friend who owned the bonds was supposed to be employed at Roth's Grill? A. No.

Q. Didn't the name Chernoff come in at all during your discussion? A. That was the name that Mr. Miller recalled on the bonds that Mishel had presented to him for cashment.

Q. You say "recall." Do you want us to understand that this is the first time that he was questioned about the bonds and he then for the first time recalled the name Chernoff? A. Yes, that's exactly what I want to convey.

Q. He did not know the name until that time, the name on the bonds? A. That is the first time Mr. Shershen—excuse me. I can't testify to that, but that is the

first time that I had heard Mr. Miller mention the name Chernoff.

(694) Q. And that date when you heard Mr. Miller mention the name for the first time, the name of Chernoff for the first time, was that date—October? A. October 10.

Q. 1950; is that right? A. That's right.

Q. I show you Government's Exhibit 20 and ask you whether it is not a fact that you knew that the Government advised Mr. Miller that the bonds were in the name Chernoff by letter.

Mr. Hallinan: I will object to this on the ground of relevancy, your Honor.

The Court: Well, let him answer it.

A. I wouldn't have any knowledge no matter what that letter says. I am talking of the first time that I talked to Mr. Miller and the first time I heard the name of the Chernoff bonds. Now, this letter, no matter what it says, wouldn't have any bearing on me.

Q. Didn't you have a discussion about the fact that the Government actually sent a series of photostats, one or more from each cashing, each one of which carried the name Chernoff? A. I wouldn't have that knowledge. Mr. Sershen would have that knowledge, not me.

(695) Q. You were there with Mr. Sershen? A. I was there with Mr. Sershen.

Q. Is it the fact that you yourself did not know at the time when you talked with Mr. Miller on October 10 that the bonds were in the name Sershen? A. The name Chernoff?

Q. In the name Chernoff. A. The name didn't mean anything to me, sir. Let me not try to mislead or anything. The name of Chernoff meant nothing to me because

the case was not assigned to me and I was just along with Mr. Sershen.

Q. So that you had no interest, or will you tell us the fact is you had no interest in the name that appeared on the bonds which had been put through the Pennsylvania Bank? A. I wouldn't have had a direct interest. I had other outside interests.

Q. In other words, you had no opportunity to learn the name which appeared on the bonds? A. That's right.

Q. Is that right? A. That's true.

Q. Weren't you in this building with Mr. Mishel at the time he was arraigned and charged with passing (696) bonds in the name of Chernoff? A. Yes, I was.

Q. And didn't you hear the name Chernoff referred to as the name that appeared on these bonds? A. No, sir. I didn't. I didn't attend the Commissioner's hearing. I merely escorted Agent Sershen to this building with a prisoner, and that was all. I waited outside.

Q. Mr. Sershen at no time told you that the bonds were in the name of Chernoff? A. Yes, sir, he did, but the name meant nothing to me.

(697) Q. So that the fact is you got the name from Mr. Miller for the first time, didn't you? A. Mr. Miller mentioned the name Chernoff as coming—as being presented by Mishel.

Q. Being presented by Mishel? A. Yes.

Q. Is it the fact that he said at the time that a man was presented by the name of Chernoff and that he asked him and that Mr. Mishel said, "He is an employee of ours at Roth's Restaurant," not grill? A. No.

Q. And then that Mr. Chernoff acknowledged that? A. No, not at all.

Q. In fact, you just went along as an officer assisting another officer who was carrying the case? A. Very true.

Q. Isn't that a fact? A. That is very true.

Q. And all these facts that you have testified to today were facts that you got on one occasion? A. That is right.

Q. Did you know that a complaint had been filed against Mr. Mishel in this building? (698) A. I was with him at the time of arrest.

Q. And during the time when he was arrested didn't Mr. Sershen tell him why he was arrested? A. He did.

Q. What did he say to him? A. He told him he was being arrested for the illegal negotiation of the Chernoff bonds.

Q. But you heard that, didn't you? A. Well, I may not have heard Chernoff, but if I heard it it doesn't mean anything to me.

Q. You will not say that he didn't use the name Chernoff? A. No.

Q. But if he did, the name didn't mean anything to you? A. That is right.

Q. For how long a time had you been an agent at that time? A. 17—well, a dozen years.

Q. About 12? A. Yes.

Q. Before you accompanied Mr. Sershen to make the arrest did Mr. Sershen tell you what case you were going out on? (699) A. I don't recall.

Q. You wouldn't say that he didn't tell you what you were going on? A. Oh, he brought me up to date on what had transpired.

Q. Didn't he then mention the name Chernoff? A. He may well have mentioned it; I don't know. It didn't mean anything to me.

Q. Again it mean nothing to you? A. That is right.

Q. What did the name Young mean to you? A. Nothing at all.

Q. But you remembered that name, didn't you? A. I do, sir.

Q. But didn't remember Chernoff? A. Oh, I remem-

bered Chernoff but, as I say, it doesn't mean anything to me.

Q. Didn't even mean the name of the person who allegedly was the owner of the bonds upon which you were assisting a brother officer to make an arrest? A. It wasn't my investigation; that was another agent's investigation.

Q. What did you go along for? A. To aid Mr. Sershen.

(700) Q. So that you say your function was in assisting in making the arrest of Mr. Mishel? A. That is right, sir.

Q. Isn't it the fact that at the time you saw Mr. Mishel he was in custody? A. No, sir. I went with Mr. Sershen, the police office, 7 o'clock in the morning, to the Bronx, Grand Concourse, arrested Mr. Mishel.

Q. Do you know whether the arrest was made by Detectives Sherdel and McCoy and Wall of the 42nd Squad, up in the Bronx? A. I can't tell you that, sir, no.

Q. What is that? A. I couldn't tell you the man's name now. They don't mean anything to me.

Q. Mr. Mishel gave an address as living up in the Bronx on the Grand Concourse? A. That is where I went.

Q. You are sure that on October 6, 1950, one or more of the detectives, either Sherdel, McCoy or Wall of the 42nd Squad— A. It could be, sir; I know there was a detective, but what his name is now I don't now recall.

Q. Could it be the 42nd Squad? (701) A. I would think that that would be the house that would take in the Grand Concourse.

Q. That is the place you went to? A. I didn't.

Q. Did you take Mishel there from his home? A. No, sir, I didn't. I took him right downtown, took him——

Q. Down to this building here? A. No, I didn't. I took him first to eat and took him from eating down to my building at, I think it was, 273 Broadway or 90 Church, I have forgotten which now.

*Edward F. Sweeney—for Government—Cross*

Q. See if I can get the arrest part straight. Was there a detective along? A. There was.

Q. Where did you meet the detective? A. I can't tell you. I don't know whether we went to the station house before 7 in the morning or whether we met him enroute.

Q. Did you have a date to meet him enroute some place? A. I couldn't tell you that, sir. I wouldn't have made that arrangement.

Q. Is it possible? I am just seeking in- (702) formation on that. A. It may well be.

Q. Is it possible that you took, you and Sershen took Mishel to the 42nd Squad in the Bronx where you met whatever detective made the— A. I don't think so. I am pretty sure we came direct, after we fed him in the morning we took him directly to our office. That is the best of my recollection.

The Court: If you are going to another subject we will take a five-minute recess now.

Mr. Rosenblum: All right.

(Jury retired.)

Mr. Rosenblum: May the witness be asked not to discuss the case with anyone during my cross-examination?

The Court: All right. Don't discuss the case.

(Short recess.)

(703) (Jury in box.)

Q. Mr. Sweeney, I notice that on several occasions you said that Mr. Sershen asked Mr. Miller for a description and he did not get one? A. That's right.

Q. About how many times would you say he asked for that description? A. I think he asked him twice.

Q. You mean even after you say Miller took the position that the man was at the door of the bank you still— or Mr. Sershen still asked again for a description?

Mr. Hallinan: I am sorry. I will have to object to the inclusion of the word "door." I do not think that was the witness's testimony. He was at the front of the bank, your Honor.

Mr. Rosenblum: May I ask the witness?

Q. Didn't you say he was at the front of the bank? A. I said that Mr. Miller said.

Q. Mr. Miller said he was at the front of the bank? A. That's right.

Q. And you were so informed, as was Mr. Shershen; (704) is that right? A. Yes, sir.

Q. So that in effect what you are saying is that Mr. Miller said that he did not see the man? A. That's true.

Q. You seem to be hesitating. What is it? A. No. I am trying to weigh your question.

Q. I see. You say that is the fact, then? A. That is what Mr. Miller said.

Q. And even after you were told by Mr. Miller that he did not see the man, you and your brother agents still asked him for a description? A. Yes, sir.

Q. Isn't it because he told you that he didn't see the man and that is why you were asking for a description? A. No, sir.

Q. Isn't it a fact Mr. Sershen got angry when he did not like the description that Mr. Miller gave him? A. No, sir, no, sir.

Q. Were you there at the time when——

Mr. Rosenblum: I do not intend to walk down.

Q. Do you recall whether or not at one time (705) during that conversation on October 10 Mr. Sershen said to Mr. Miller, "Now that we"—withdraw that.

"The description you gave is not a good description"; did that ever occur? A. No, sir.

Q. That he did not think it was definite enough or helpful enough? A. No, sir.

Q. Did you hear him say that "Now that we have the man"— A. No.

Q. You don't know what I am going to say. You are shaking your head no. A. It doesn't matter what it is. That point is wrong.

Mr. Rosenblum: Would you read what I said, Mr. Stenographer?

(Record read.)

Q. You say you did not have the man, Mishel?

Mr. Hallinan: No.

Q. You had a man, didn't you?

Mr. Hallinan: I will object to this. It is not a true characterization of what he did say.

Mr. Rosenblum: I will change the form of the (706) question to save time.

Q. Isn't it a fact that you and Mr. Sershen told Mr. Miller that you had taken a man into custody? A. No, sir.

Q. You did not tell him at all? A. No, sir, not that I recall.

Q. Try to think hard, will you? A. I am thinking very hard, and my answer is no, we did not tell him, to the best of my knowledge.

Q. You were there, weren't you? A. Oh, I was there.

Q. And wasn't this discussed by you with Mr. Hallinan and Mr. Sershen before you took the stand? Wasn't this point covered? A. I don't quite know what you mean on that.

Q. I will change the question. If you do not understand my question, tell me. I prefer to change it.

*Edward F. Sweeney—for Government—Cross*

During the occasions when you discussed this matter with Mr. Sershen and Mr. Hallinan, either one or both, didn't the question come up as to whether or not Mr. Miller was advised as to whether you had arrested Mishel? A. No, sir.

(707) Q. That was never raised at all? A. No, sir.

Q. How many times have you spoken with Mr. Hallinan? A. Twice.

Q. Since that day— A. Twice.

Q. And how many times did you speak to Mr. Sershen about this case? A. Once, I think; once about the case, once that he informed me that it was coming up for trial, which we had no conversation about it.

Q. Did you go to see Mr. Miller after you had—you or Mr. Sershen—when I say you I mean you or Mr. Sershen or both—arraigned Mr. Mishel in this building before a United States Commissioner? A. Yes, on October 10.

Q. I am referring to October 10 in these questions. A. Yes, sir.

Q. That is, you went up to see Mr. Miller? A. Yes, sir.

Q. And you say now that you cannot tell us either way excepting that your best recollection would be that you do not think that Mr. Miller was told at the (708) time that Mr. Mishel had been arrested? A. Not to my knowledge. I didn't hear it mentioned.

Q. Did you discuss with your brother agent Sershen the fact that you would not advise Mr. Miller— A. No.

Q. —about the arrest of Mr. Mishel? A. No.

Q. Did you and he agree that it should be kept secret for a time? A. No, sir.

Q. Can you give us any reason why he was not told that Mr. Mishel had been arrested? A. I will have to give you a personal opinion. That wouldn't have any bearing on the case.

Q. If it is just personal and if it is not factual I won't ask you for it.

Can you tell us whether Mr. Miller's desk was at a point where you could see the door, that is, not see it but within a matter of, say, 20 feet from the door to the bank, the door through which you enter to come into the bank? A. I believe it was, sir. I think it was over on the left side of the bank quite some way back.

(709) Q. About how many feet would you say? A. I hesitate to give you a guess at this time.

Q. What is your best guess? A. I would say 25.

Q. About 25 feet? A. About; maybe a little more.

Q. Approximately? A. Maybe a little more. I do not now recall exactly where it was.

Q. While you were there did you notice whether it was a busy little bank, a lot of people going in and out? A. I think at the time of day I was there that it wasn't too busy.

Q. What time of day were you there? A. I would say it was before noon, to the best of my knowledge.

Q. Will you tell us just what Mr. Miller said in connection with his knowledge that that person that you were questioning about, whatever his name was at the time, was at the door? A. No, it was Mr. Miller that brought up the topic that there was an individual with Mishel at the time who remained at the front of the bank.

(710) Q. And Mishel also remained at the front of the bank? A. No, sir. To the best of my knowledge, and if I recall Mr. Miller's statement, Mr. Mishel was seated at Mr. Miller's desk at the time that the individual was supposed to be in the front of the bank.

Q. What did he tell you as to why he knew or believed that that individual was supposed to be at the front of the bank? A. I don't know.

Q. There was conversation there, was there not, between you and Sershen and Miller? A. He said for the most part when asked if he had—offer a description of it, he said he had not seen him.

Q. Did he say how he knew that the man was at the front of the bank? A. He didn't state.

Q. You are sure of that? A. Positive.

Q. And you, as an agent, with experience at that time of 12 years, did not ask him how he knew the man was there? (711) A. Mr. Sershen did most of the questioning.

Q. Did Mr. Sershen ask that in your presence? A. I don't recall him asking that question, no, sir.

Q. Did you suggest to Mr. Sershen that he ask the question so that you could determine how Mr. Miller knew that someone was at the front of the bank, at the door? A. Well, we would have had to take that for granted at that time.

Q. You would have had to take what for granted? A. That Mr. Mishel had informed Mr. Miller that the individual—that that was the thought that he was trying to convey to us.

Q. But he did not say it, you say? A. No, sir.

Q. Now take a look in back of you, please, Mr. Sweeney. Just one moment. Will you turn around, please?

Mr. Rosenblum: Might I for the moment cover something?

The Court: Go ahead. Put a piece of paper over anything you want. You can take some scotch tape there, if you want.

(712) Q. As you come into the bank, was Mr. Miller's desk on the left-hand side or the right-hand side, as you come in? A. I would say, sir, as best I can recall now, it was on the left-hand side.

Q. On the left-hand side? A. I would say so, sir.

Q. All right. Would you turn around, please, Mr. Sweeney? Do you realize here (indicating) it says, "Entrance" on 48th Street. Do you recall that the entrance was on 48th Street? A. Yes, sir.

*Edward F. Sweeney—for Government—Cross*

Q. Can you tell us about how far from the front of the bank was Mr. Miller's desk? A. I am afraid it would merely be a guess.

Q. You don't have any firm recollection? A. No, not at this time.

Q. Then I won't press you. Now, I will show you this exhibit. Take a look at this thing. It has been testified to here by witnesses that Mr. Miller's desk is about here (indicating), at the place where the word "Miller" appears, and the entrance to the bank is at this point, here, 48th Street. You say that Mr. Mishel—he said Mr. Mishel was sitting at his desk, is that right? (713) A. I believe that was what he had said.

Q. Can you tell us whether or not from the desk, where it appears here, where—were you at his desk at the time? A. I sat at his desk and I think he referred to he was in the same seat.

Q. Do you recall whether the distance to the front was this distance as indicated here, and I think the testimony has been that it was a quarter of an inch——

Mr. Hallinan: The scale is right above there.

Mr. Rosenblum: I see the scale but I don't know how to read it, frankly.

Mr. Hallinan: The entire scale is thirty feet, I believe.

Mr. Rosenblum: Thirty feet.

Q. You see the scale on top.

Mr. Hallinan: From zero to 30.

Q. From zero to 30 represents a distance of 30 feet. So you can see if you applied that from the point that Mr. Miller's desk had been to 48th Street you could tell approximately how many feet it would be from. A. I do not now recall other than the fact—I do recall that there

was glass cases were over here (indicating) that the tellers are in, and I think that (714) we talked to the bank guard about here (indicating), and one of the other tellers was in here (indicating).

Q. Do you recall whether or not something was said either by you or Mr. Shershen with reference to the distance that separated Mr. Miller and Mr. Mishel from a person who was, who you say Mr. Miller said was supposed to be at the front door to the bank? A. Toward the front of the bank were the words.

Q. Toward the front? A. Yes.

Q. In other words it might not be at the front? A. It could be here, it could be here (indicating). That I don't know. There wasn't any statement.

Q. Do you recall definitely that the word "toward" was used? A. Yes.

Q. Now, you say that some redemption forms, slips, were produced at the time you were there. A. Yes, sir.

Q. From that you got the name Young, is that right? A. That is—yes. Well, let me not say that, because Mr. Shershen had photostatic copies prior to the originals being shown by Mr. Miller.

(715) Q. And you say as a result of the fact that some of these slips had the name Young on it that you went down to Roth's Grill to look for a man by the name of Young? A. Yes, sir.

Q. And that was the person who was supposed to own the bonds? A. I can't tell you that, sir.

Q. Well, you can't tell us now that from that conversation you had with Mr. Miller and Mr. Sershen whether the name Young was the name of the person who owned the bonds? A. No, I am not saying that at all. I at the time did not know why the name of Young was contained on the redemption slips.

Q. Was something said about the fact, while you were at the bank with Mr. Miller and Mr. Shershen, was some-

thing said about the fact that the name Young—was something said about the name Young? A. Yes.

Q. What was said about it? A. Mr. Shershen had informed me, I think prior to entering the bank, concerning the name of Young.

Q. What did he tell you about Young? (716) A. He told me at that time that the account was—oh, what can I say—was O. K'd by a Young or was guaranteed or some such thought as that, and the name was contained on a few of the redemption slips.

Q. You say the account was guaranteed by the name Young. What account was guaranteed by the name Young? A. Well, I am not trying to weigh words, sir, and I may be conveying a bad impression with you on this score. But, however, my personal opinion now I would have to express because I don't know exactly and I don't think that——

Q. Is what you are about to say a fact or is it just opinion? A. It would be more of an opinion. I did hear something——

Q. Then I am not going to ask you for your opinion because I would like to get facts if we can.

You knew, did you not, from what you have told us, that the person who brought in the bonds you say was Mr. Mishel? A. No, that is what Mr. Miller said.

Q. You knew that Mishel had something to do with this, didn't you? A. Yes, sir.

(717) Q. Then what did you understand Mishel had to do with it? A. I understood that he was the negotiator of the bonds.

Q. And he brought them in to Mr. Miller? A. That is right.

Q. Right? A. Right.

Q. And you say at the time he brought them in he had another person with him who was at the front of the bank,

towards the front of the bank? A. I am merely stating what Mr. Miller informed us.

Q. Now, did you look at the redemption forms on the occasion when you discussed them with Mr. Miller in the presence of Mr. Sershen or Mr. Sershen discussed redemption forms in your presence? A. No, sir, I didn't.

Q. Hadn't you seen them before? A. No, sir, I had not. Mr. Sershen informed me he had them and he was going to talk to Mr. Miller concerning them.

Q. I see. But he didn't show them to you? A. No. If he did, I don't recall it.

(718) Q. Could you tell us which it is, please? Let me show you these bonds and redemption forms and see if they refresh your recollection. I show you Government's Exhibit 1-A to and including 8-A and ask you to look at them by picking up the identifying mark, the slip put on by the clerk. I show you, first, 1-A. A. In order to save time, sir, I would say that if I did examine them they wouldn't mean anything to me because I didn't examine them at the time that I was in the bank.

Q. You mean you examined them before? A. No, I did not. I knew that Mr. Sershen had photostatic copies of these but I didn't look at these nor did I see these.

Q. Did you see them when you were at the bank? A. No, I didn't see them.

Q. Did you see that they were sent for? A. No, I didn't see them. I thought, the best of my recollection now is that they were on Mr. Miller's desk.

Q. You mean at the time you came in they were on Mr. Miller's desk? A. Wait, just a minute. I am a little hazy on whether he sent for them or whether they were on his desk. (719) I wouldn't be able to at this time tell you whether they were on the desk or whether he called someone that had them brought to his desk.

Q. Had you or Mr. Sershen, to your knowledge, advised Mr. Miller that you were calling upon him that day?

A. No, sir, I didn't. Maybe Mr. Sershen had; I would not know that.

Q. Did he tell you whether he had or not? A. No, sir.

Q. You were with Mr. Sershen from early that morning, 7 o'clock, when you picked up Mishel? A. No, no.

Mr. Hallinan: Two different dates, your Honor.

Mr. Rosenblum: I am sorry. I have the dates wrong.

Q. On the 10th, what time did you meet Mr. Sershen? A. I was with him in the office at 8.30 in the morning.

Q. And did you stay with him? A. I wouldn't—I probably didn't actually go with him until sometime after 10.30, and I think we went directly to the bank. That is to the best of my (720) recollection now.

Q. Would you recall whether you had any discussion with Mr. Shershen with regard to the visit to Mr. Miller? A. The previous visit he had, you mean?

Q. No, the visit you are about to make. A. No. We were just going up to see Mr. Miller, that was all.

Q. And had you discussed the fact that Mr. Shershen had previously visited with Mr. Miller? A. Yes, sir.

Q. And you say when you came to the bank you don't recall whether these very redemption slips which I have just shown you were on his desk or he sent for them? A. No, sir, I do not now recall that.

Q. Well, tell us what was said by either Mr. Miller or Mr. Shershen for the first time in connection with these redemption forms. A. Well, they entered into the discussion in the course of the conversation, to the best of my knowledge, and they were produced by Mr. Miller.

Q. What was said? Tell us, please. A. Oh, I can't recall that, sir.

Q. What was said, if you can recall, or the (721) substance of what was said which led to their being pro-

duced by Mr. Miller? A. Mr. Sershen had inquired of Mr. Miller if he had any information concerning this Mr. Young.

Q. Yes? A. And it could well be that then, and on this I am not sure of, that Mr. Miller probably produced these slips at the time.

Q. Will you tell us whether while you were there these slips—when you say produced, what do you mean? He took them out of his desk or sent for them? A. Well, that is what I previously testified; I could not recall exactly whether they were sent for or whether they were on Mr. Miller's desk.

Q. At the time you came in they either could have been on his desk or he may have sent for them? A. As far as I am concerned, that is true.

Q. And they were discussed by Mr. Sershen and you and Mr. Miller, with Mr. Sershen, I assume, carrying the bulk of the conversation, is that right? A. That is correct, that is true.

Q. And at the time you saw these redemption forms? A. They were produced—or let me say they were picked up by Mr. Miller and shown to Mr. Sershen, the (722) originals.

Q. Were they shown to you also? A. Well, I was there, but I did not examine them.

Q. Didn't you see the name Chernoff right on the top one? A. I could well have, but it doesn't mean anything to me, again.

Q. Did it mean to you that the name Chernoff represented the name of the person who was supposed or who was the owner of the bonds? A. That is apparent to me that there were bonds lost, reported lost filed and an affidavit executed by the bond owner.

Q. Did you see it? A. No, sir, I did not.

Q. You knew they had to be in some name? A. Exactly.

Q. Those bonds; is that right? A. Exactly.

Q. You are acquainted with a redemption form, are you not? A. In all banks.

Q. You are acquainted with them? A. Yes, sir.

(723) Q. Your job or work as a secret service agent is to make investigations concerning violations of a particular type which concern themselves with the Treasury Department, isn't that so, in substance? A. Yes.

Q. I know there are other duties. But that at least is one of your duties, isn't that right? A. That is right.

Q. So you are acquainted, or are you acquainted with redemption forms? A. Yes, sir.

Q. And do you know that on a certain line of a redemption form is supposed to appear the signature of the person in whose name a bond is issued and which is supposed to be the same name placed on the redemption form at the time the bond is cashed? You knew that, did you not? A. Yes, sir.

Q. So that when these redemption forms were produced using the word as you have told us, what you thought it meant to you, you saw the name Chernoff, did you not? A. I did not examine the slips.

Q. Was there anything said about the name (724) Chernoff when you first came in, before the slips were sent for? A. Only the fact that Mr. Miller had stated he recalled Mishel presented bonds to him which contained the name Chernoff.

Q. That was right at the beginning? A. That is right.

Q. So you heard the name Chernoff then? A. Yes, sir.

Q. You knew then that the bonds in question were bonds which had been issued in the name Chernoff? That is all I am trying to establish. A. Yes.

Q. All right. Now, do you recall whether or not Mr. Sershen told you that he knew Mishel before the arrest took place?

*Edward F. Sweeney—for Government—Cross*

Mr. Hallinan: I object to this on the grounds of relevancy, your Honor.

Mr. Rosenblum: I am leading up to something.

Mr. Hallinan: I know.

The Court: I will let him answer. Go ahead.

A. Would you repeat the question?

Q. Yes. You and Mr. Shershen went up to take a man into custody; you knew the man's name was Mishel; (725) you had never seen him before; right? A. That is right.

Q. Did Mr. Shershen tell you whether he had ever seen him before? A. No, he didn't.

Q. You had a picture of him, didn't you, to know who you were picking up? A. No, sir, we had no picture that I know of.

Q. You mean you had none? A. I had none.

Q. Do you know whether Mr. Shershen had one? A. I don't believe he did.

Q. Did he tell you? A. I didn't ask him.

Q. No, no. Did he tell you the description of the man he was going to pick up? A. No, sir.

Q. Isn't it normal in your routine, investigations and, in particular, at the time of an arrest, when you go to pick up a man who you have never previously seen, to either have a picture or a description of him? A. Sometimes, if one is available; more times than not we don't.

Q. What did Mr. Shershen tell you about Mishel's (726) prior history which indicated to you whether there was or was not a picture available? I am only interested in the picture.

The Court: I think you have gone far enough on that. Let us get back to the issue in the case.

Q. Would you say definitely now that when you came into the bank to see Mr. Miller that Mr. Sershen didn't

show him the picture of Mishel? A. I would say that, yes, sir.

Q. Or would you say that you are not positive of that? A. No, I would say he didn't show him a picture.

Q. Would you say that you had no discussion with Mr. Shershen as to whether he did or didn't have a picture? A. No, there was no discussion at all.

Q. During the time while you were in the Pennsylvania Exchange Bank on the occasion that you told us about, were you at all times present with Mr. Sershen when he talked with Mr. Miller? A. Yes, sir.

Q. You did not have any other duties to speak to anyone? A. No. I did go with Mr. Sershen. I think he talked to the bank guard, whose name now eludes me.

(727) Q. But that was in your presence? A. That's right.

Q. You said before that you knew that the name Sershen came up as being the name on the bonds which were cashed? A. Chernoff.

Q. Chernoff. Excuse me. Right? A. Yes.

Q. Then the name Young came in; right? A. Yes.

Q. Now, isn't it the fact that you were trying to locate the person who Mr. Miller told you was represented to him by the name of Chernoff? A. No, sir.

Q. You were not? You did not go to Roth's Restaurant to see whether— A. Yes.

Q. I know you went. You told us that. A. Yes.

Q. You did not go to Roth's Restaurant to determine whether they had an employee by the name of Chernoff? A. No, sir. We went there to ascertain if we could locate an individual by the name of Young.

Q. Young? (728) A. Yes.

Q. And who did you understand Young was supposed to be in this transaction? A. I didn't know and I still don't know.

Q. You said something using the word near the end

of your testimony, and I don't think I got all of it down in my notes here, about documentation; do you remember? A. Yes.

Q. Will you tell us that again, please? A. It was pertaining to documentary identification or documents that would identify the individual as the true owner of the bonds.

Q. You knew, did you not, as a Treasury Agent, that there were several ways by which an owner of bonds could be identified? A. Yes, sir.

Q. Isn't that right? A. Yes, sir.

Q. And one of the ways by which a person could be identified is if he produces satisfactory documents, documents which satisfied a bank that he was the person who owned the bonds he was presenting if he wanted bonds cashed?

(729) Mr. Hallinan: I will object on the grounds of relevancy, your Honor.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. Was that the only means of identifying an owner of bonds, that is, by documentation? A. No.

Mr. Hallinan: I will object to this on the grounds of relevancy. It is the same question put another way.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. Was there any means acceptable to the Department of identifying a person who wanted bonds cashed by accepting the identification from a customer of a bank? A. There are several means, sir.

Q. Was that one of the means? A. And the acceptable means is that--first, probably the most acceptable means

is that the individual have an account at the bank where the bonds are being negotiated, or that he be personally known to either the bank officials or the teller.

Q. From your contact with this case and whatever (730) you learned about the case, did you know whether or not Mr. Mishel had an account at the Pennsylvania Exchange Bank?

Mr. Hallinan: I will object to this on the grounds of relevancy, your Honor. May we approach the bench?

The Court: Surely.

Mr. Hallinan: I will say it.

The Court: I will sustain the objection and let you say anything.

Mr. Rosenblum: Exception.

I have no further questions.

The Court: Do you have questions?

Mr. Hallinan: Just one.

Redirect examination by Mr. Hallinan:

Q. Agent Sweeney, in response to Mr. Rosenblum, several of his questions, you testified that you went over this case with me and you went over it with Agent Shershen.

Did you also go over the report prepared by Agent Shershen in October, 1950? A. I did, sir.

Mr. Hallinan: I have no further questions.

(731) Mr. Rosenblum: I assume you have that report here, Mr. Hallinan.

Mr. Hallinan: Yes, indeed.

Mr. Rosenblum: May it be marked?

Mr. Hallinan: It may be marked and you may have it right now, if you wish it.

(Defendant's Exhibit B for identification marked.)

Mr. Rosenblum: You are so magnanimous it makes me suspicious.

Mr. Hallinan: Do you want to look at it?

Mr. Rosenblum: I like to look at anything.

The Court: Do you want to keep this witness?

Mr. Hallinan: Yes. I imagine Mr. Rosenblum does.

Mr. Rosenblum: Do you have a photostat of this for me, if you are that kind?

Mr. Hallinan: I will ignore that remark.

Mr. Rosenblum: May I have a photostat?

Mr. Hallinan: Yes.

Mr. Rosenblum: I won't be able to finish this. It is several pages. I would like to read it as carefully as Mr. Hallinan insists he wants me to read it. If I may have a photostat—it is 25 after.

(732) The Court: Do you have any more questions of this witness?

Mr. Rosenblum: I might have after I read the report.

The Court: All right. They want you back tomorrow, Mr. Sweeney. We will see you at 10.30.

Ladies and gentlemen, I will excuse you until tomorrow at 10.30.

Mr. Rosenblum: May the same admonition——

The Court: Don't discuss the case.

Don't you discuss the case either, Mr. Sweeney.

(Adjourned until October 25, 1956, at 10.30 o'clock a. m.)

(733)

New York, October 25, 1956;
10.30 o'clock a. m.

Trial resumed.

Mr. Rosenblum: May I bring one thing to your Honor's attention?

The Court: Sure.

Mr. Rosenblum: Yesterday when the witness Levy—your Honor will undoubtedly recall, first, that Mr. Hallinan stated that I was making remarks that the jury could hear.

The Court: Yes.

Mr. Rosenblum: Yesterday when the witness Levy stated that his client was the Pennsylvania Exchange Bank and not Mr. Miller, Mr. Hallinan said, "That son-of-a-bitch," loud enough so that Mr. Rooney could hear it. I could hear it and later when I talked to Mr. Malinky I said, "You will lose a bet when you say Mr. Hallinan never swears."

I bring it out because if we can hear it the jury can hear it.

Also I think you will see throughout his (734) grimaces sitting there.

Mr. Hallinan: Just a minute.

The Court: He has not. I have been watching him. What he says that I cannot hear you can tell me about, but I can see his face pretty well. So I do not remember any grimaces.

Mr. Hallinan: May I be heard on this just briefly, your Honor?

Mr. Rosenblum: I have one other point. When the witness is being examined, "Now raise your voice" and "Now make it real loud." You can see it right in the minutes when it comes to a certain point. "Now make it real loud" or words to that effect. It should not be done. I do not try to do it.

The Court: As a matter of fact, I really think that it has been a very clean trial that way. Both of you have, within the limits of human exasperation, done your best.

I think also that it is very good for both of you and for your respective parties that you do, because from what I have seen of these juries any maneuvers to the other extreme hurt rather than help. I did not know anything about that. I was going to speak myself for a moment to you.

(735) One of the things that Mr. Hallinan has done twice is offer you reports in front of the jury. I do not know whether you have asked for any in front of the jury. This happens quite frequently. It is not an unusual thing, but I would caution you again not to do it. If you want to offer something, come up and tell me about it; and if you want something, come up and ask me for it.

Mr. Hallinan: He did ask for that statement.

Mr. Rosenblum: Let us get the sequence of it. After I finished Mr. Hallinan got up and asked a question. He said, "You testified you refreshed your recollection as to what you have testified about. Did you also use a report which was prepared?"

So I simply said, "May I see it?"

I have a right to see anything the witness saw. The answer was, "Yes, indeed," as though—I do not intend to use it. I do not intend to question this witness any further. This jury will now think there is something in that report—I had a right to ask to see anything he used to refresh his recollection.

Mr. Hallinan: I made it available, but the rule under the Goldman case, 316 U. S. 329, is if the (736) person uses it off the stand to refresh his recollection, they are not entitled to it, but I did

not want to get technical and I made it available to Mr. Rosenblum.

The Court: That is all to the good. I do not think any incident in itself is worth commenting on and probably if I had less astute counsel on both sides I would not comment at all, I would figure it would better to go ahead and let you do whatever you are doing instead of trying to suggest any improvement; but I do think the trial dragged a little yesterday. I think the jury is going to be sooner or later concerned to complete this case, which is running a little bit longer than the two or three-day case.

Mr. Rosenblum: We expected it to be a two or three-week case, and I think we will complete it much faster than that.

The Court: That is all right. I say I would not do those little things which take time unnecessarily, and over a longer trial these little exchanges between counsel become tiring rather than interesting to the jury, I think. So I would cut it out.

(737) Mr. Rosenblum: For instance, this morning I say to your Honor I am not going to question this witness any further unless Mr. Hallinan does. I prefer nothing is said, "Do you want to examine this witness" or anything like that.

Mr. Hallinan: I won't. Unfortunately, I did let Mr. Malinky down. He thought I had certain attributes which he discussed and he lost a bet. I did discuss this with Mr. Rooney in the corridor. I said, "Did you hear me?"

He said "No, I did not hear you but I read your lips."

Mr. Rosenblum: I heard you.

The Court: You were not facing the jury?

Mr. Hallinan: No, I was facing Mr. Malinky.

*Colloquy of Counsel*

The Court: I think it is best to be professional about these things and conceal your thoughts, if you can.

Mr. Hallinan: I try very hard. I lost my head.

The Court: All right.

Mr. Hallinan: You are through with Mr. Sweeney?

Mr. Rosenblum: Yes.

(738) The Court: Next witness, then.

Mr. Hallinan: Your Honor, as of now I have one witness out there. And one other was told to be here at a certain time and he has not shown up as yet. Agent Sershen is the third witness, and then I am through, I will rest; I expect to rest some time today, depending on how things go.

Agent Sershen is heading or one of the heads of the detail for the President this morning, so he won't be available until—I told him to be in my office as close to one o'clock. So we may run short. I may have to locate that other witness for this afternoon also, the one who is not here yet.

May I check and see if he is here now?

The Court: We can get the jury in anyhow, can't we?

(Mr. Hallinan left the room and returned very shortly.)

Mr. Hallinan: Just one is here. The other has not shown up.

The Court: All right.

(Jury in box.)

(739) SAM SIEGEL, called as a witness on behalf of the Government, being duly sworn, testified as follows: Direct examination by Mr. Hallinan:

Q. Mr. Siegel, by whom are you employed? A. United Cutlery & Hardware Products.

Q. In what capacity are you employed by them? A. Salesman.

Q. You will have to keep your voice up now. How long have you been employed by them? A. Two years.

Q. Now, Mr. Siegel, have you ever been convicted of a crime? A. Yes.

Q. When was that? A. 1953.

Q. What was the crime? A. Forgery of bonds.

Q. Did you plead guilty to that crime? A. Yes.

Q. And what were you sentenced to? A. Two years' probation. I pleaded guilty and I was sentenced to a two-year probation.

Q. Now do you know Irving Mishel? (740) A. Yes.

Q. Were you at one time employed by him? A. Yes.

Q. Can you tell the Court and jury when that was, please? A. Between 1948 and '50.

Q. Now what did you do for Mr. Mishel in your employment? A. An errand boy.

Q. In that capacity did you run errands for him to the Pennsylvania Exchange Bank? A. Yes, sir.

Q. Did you ever bring anything to Mr. Miller on the instructions of Mr. Mishel? A. Yes.

Q. What was that? A. Envelopes.

Q. How many times did you bring envelopes down to Mr. Miller for Mr. Mishel? A. Say about half a dozen.

Q. What was in those envelopes? A. Theatre tickets and money.

Q. How many times was money in the envelopes? A. I would say about three or four times.

(741) Q. Now when you brought them down to Mr.

Miller what did Mr. Miller do with these envelopes? A. Put them inside his coat pocket.

Mr. Hallinan: You may inquire.

Mr. Rosenblum: May we approach the bench?

(The following proceedings took place at the bench without the hearing of the jury.)

Mr. Rosenblum: I believe your instructions to us were if we could realize in advance that we should limit our testimony produced to relevant matters. Now I can't see the relevancy of this testimony. Based upon what I know of the testimony given by the other witnesses and the issue in the case I don't see the relevancy of this.

Mr. Hallinan: This goes to the heart of the relationship between Mishel and Miller. The witness Mishel has testified that one of the ways he used to Miller for these stiff accounts was to put money in an envelope and send his messenger boy down to Miller with it. I think this goes to the very heart of this case. We are charging Miller with making a false statement, and I think bringing out the conditions in the circular letter that have to be met, to put it as conservatively as possible, (742) demolishes any claim that he knew that this person was a person of integrity and——

Mr. Rosenblum: It has nothing to do with the false statement.

Mr. Hallinan: It has plenty to do with it.

The Court: In other words, Miller had no basis for writing a letter upon anything that Mishel told him because he knew Mishel was a dishonest person who was dealing in stiff accounts.

Mr. Hallinan: And receiving money for it.

The Court: And receiving money for it.

Mr. Perry: The charge would be whether or not

these statements were false, but we do seem to be getting away from that and now it is really a character assailment, it seems to me. If Miller were charged, for example, with being in cahoots with Mishel, then he could say it is relevant, that he was in cahoots with Mishel.

The Court: They say they don't have to prove he was in cahoots with Mishel, but by proving it they establish the very best possible proof that Miller knew Mishel was not a person of reliability and integrity whose introduction of a bond payee was worth anything.

(743) Mr. Perry: It seems to me we have this problem, since the whole area of the case has been opened by the few first witnesses Mr. Hallinan put on, I think our cross-examination of Mishel was unduly curtailed in view of the Government's presentation of its case.

Mr. Hallinan: No.

Mr. Perry: That we should have been able to spread the area.

Mr. Rosenblum: We should.

Mr. Perry: There are some items, Judge, which we have on the very best of information that Mishel flatly was lying. The impression that I got, and I was not present at all at these bench conferences, the impression I got, you at one time had indicated to Mr. Rosenblum that some of these matters were collateral and that you wouldn't permit us to show he was lying, and we are now at a very serious disadvantage.

The Court: You want to keep in mind what you can put in as a defense from what you can put in as cross-examination addressed to direct testimony brought out by the Government. I went over your offer of proof, but is there anything in it that you

(744) didn't have in it that you wanted to call my attention to?

Mr. Perry: For example, your Honor, I would like to be in a position to say to you that I have checked so that I could actually tell you what the fact is, but my information, your Honor, which I think is sound, is that Mishel's story about the vaults is untrue.

Mr. Hallinan: I didn't hear that word.

The Court: That his story about the vaults is untrue. That was developed on cross-examination, not on direct.

Mr. Perry: Judge, I would have to examine the minutes to see just where this fits in.

Mr. Rosenblum: Even if it was, it followed after Mr. Mishel said that they had moneys together in which they had an interest.

Mr. Hallinan: He never testified to that.

The Court: You check the minutes. I think you will find that that all came out on cross, that on direct he testified that he had stiff accounts, the payments for the stiff accounts and the occurrences on the days the bonds were cashed——

Mr. Perry: I didn't mean to interrupt you. (745) There is one thing that does not fit in with that. If that were the Government's theory of the case and developed through the witnesses as their theory, then I say there is absolutely, in my judgment, no reason to go into the incident with Gallagher. This business of having met with Gallagher——

Mr. Hallinan: That is the starting point in the story.

Mr. Perry: Once you start something it seems to me we should be able to pursue it and see where we go from there.

*Colloquy of Counsel*

The Court: All I am saying is, keep in mind the difference between cross and the defense. If you want to put in anything as to defense we can cross that bridge when we get to it.

Mr. Hallinan: I should like the record to indicate, in response to one of Mr. Rosenblum's statements, or Mr. Perry's, that cross-examination was unduly restricted, that Mr. Rosenblum was allowed complete latitude in raking Mishel over on when the money for the stiff accounts was paid, the amounts of the money, and he hammered at him time and time again in that area. And if I recall on the direct testimony (746) there was no objection to that testimony coming in.

The Court: I think that there has been a fairly consistent pattern followed here and I will take this testimony.

Mr. Hallinan: In furtherance, I might say that we didn't develop all of the areas in which Miller and Mishel had, which I thought would be relevant, but I just wanted to get enough in there to show what the relationship was. Also, from the Government's viewpoint, they talk about this, they have this information and that information, and we could have extended the testimony way beyond what we offered on the relationship between these two.

The Court: I can see that we get into a defense in respect to that.

* * * *

Mr. Hallinan: Your Honor remembers I made that for the sole purpose of putting them on notice if they wanted to go into the background of some other individuals that that is what we had.

Mr. Rosenblum: We will move for a mistrial based upon the information which we just discussed with you at the bench.

*Motion for Mistrial—Denied*

*Samuel Siegel—for Government—Cross*

The Court: On the background?

Mr. Rosenblum: On the testimony which has been elicited from this witness at this time with reference to this.

The Court: I will deny your motion.

Mr. Rosenblum: Exception.

(The following proceedings were held in the hearing of the jury.)

Cross examination by Mr. Rosenblum:

Q. Mr. Siegel, we have spoken with each other (748) by telephone? A. That is right.

Q. I asked you to come to my office? A. Pardon me?

Q. I asked you to come to my office? A. That is right.

Q. You said you would have to speak to Mr. Hallinan? A. That is right.

Q. And then you said you wouldn't come? A. Pardon me?

Q. You said you wouldn't come? A. I had told you I wouldn't come before I had spoken to Mr. Hallinan also.

Q. Then I spoke to you after that? A. Yes.

Q. You still didn't? A. That is right.

Q. In connection with this testimony you just gave in reference to the delivery of envelopes, when for the first time did you tell that to any law enforcement officer? A. I believe that was told to Mr. McAvinue.

Q. About how long ago was that? (748a) A. It was the time that I was arrested.

Q. You say at the time of your arrest? A. Approximately at that time.

Q. Or was it after your conviction? A. I would say it was before my conviction, during the time that I was going up to Mr. McAvinue's office.

(749) Q. So it would be before the time you pleaded guilty to the crime; is that right? A. I would say so, yes.

Q. And that would be, then, about what year—19 what? A. It would be about '52, approximately that time.

Q. Approximately 1952? A. Approximately that time.

Q. Now, you say that about a half dozen times you brought down envelopes; is that right? A. That's right.

Q. Were they open or closed? A. Sealed.

Q. Sealed envelopes? A. That's right.

Q. And how many times did it contain theatre tickets? A. Pardon me?

Q. How many times did it contain theatre tickets? A. I would say about two or three times.

Q. So that either three or four times you say it contained money; is that right? A. That's right.

Q. Did you know Mr. Miller well at that time? (750) A. Did I know him well? No, sir.

*Samuel Siegel—for Government—Cross*

Q. You say you were giving Mr. Miller an envelope that he put in his pocket? A. That's right.

Q. Did you tell that to Mr. McAvinue? A. Pardon me?

Q. Did you tell that to Mr. McAvinue? A. I couldn't say whether I told it to him at that time it was put in his pocket or what.

Q. When for the first time did you tell it to anyone that Mr. Miller put an envelope in his pocket? A. It was the time that I was being questioned. I couldn't give you an exact time on it.

Q. Did you tell it to Mr. Milenky? A. It's possible I did.

Q. Was that the first time? A. Pardon me?

Q. Was that the first time? A. No, it wasn't.

Q. Who did you tell it to for the first time? A. I told you Mr. McAvinue.

Q. You do recall you told him you saw him putting it in his pocket? A. I didn't say I saw him putting it in his pocket. (751) You asked me who I told about delivering envelopes to Mr. Miller and I told you.

Q. I asked you who you told the first time about putting the envelopes in his pocket. A. I don't recall who I told it to the first time.

Q. Can you recall approximately when you told it to anyone for the first time? A. Would you want me to guess?

Q. No, I do not think we want a guess, but can you give us an approximate date that you think that you fix as the approximate time? A. It goes too far for me to be accurate and give you any specific time.

Q. You had been bringing many envelopes down to the bank, had you not, as an errand boy? A. As an errand boy, I wouldn't say many envelopes. Whoever it was told for me to give it to.

Q. Did you ever give envelopes to a Mr. Horan? A. I don't believe so.

Q. Would you say you did not? A. I would say I didn't. The name doesn't sound familiar to me at all.

Q. One of the tellers. (752) A. The name don't sound familiar to me at all.

Q. Did you know the tellers at the bank? A. I would know them by sight, a few of them.

Q. And you don't recall any teller whose name was Horan? A. No.

Q. Didn't you bring papers down, say hypothecation agreements? A. I don't know what you mean by "hypothecation agreements."

Q. Do you know whether or not you delivered a hypothecation agreement to the bank in connection with the Alpren Bonds? A. Whether I brought it to the bank?

Q. Yes. A. No, I didn't bring anything like that to the bank.

Q. Did you read every paper that was brought down to the bank? A. No, sir.

Q. For how many years were you working as an errand boy? I am only using the expression you used. A. That's right.

Q. I am not using it any other way. For how (753) many years did you bring papers as an errand boy to the bank? A. The entire period of time I was employed by Zeneth, Mishel's firm.

Q. Zenith; is that right? A. Yes.

Q. Did Zenith have an account with the Pennsylvania Exchange Bank?

Mr. Hallinan: I will object to this area, your Honor. May we approach the bench just briefly?

The Court: Yes.

(The following proceedings took place at the bench, not in the hearing of the jury.)

Mr. Hallinan: I think your Honor allowed certain questions of other witnesses along this line on

the ground it was testing the witness' recollection. I think that this matter, in reading over the record very carefully, is very clearly defensive matter. While it might ethically be considered testing the witness' recollection, I think this doubt should be exercised in favor of the Government at this time because the most important purpose of this is defensive matter and I would want that elicited at another time.

There are too many other ways of testing (754) this man's recollection without going into this other matter where I think 90 per cent of it is going to be defensive matter rather than just testing the witness' recollection.

The Court: Is there any reason why you cannot tell me what the prejudice is to the Government?

Mr. Hallinan: Yes. On this particular matter they are going in I am quite sure—do you remember what Mr. Rosenblum mentioned on his opening statement? There were loans granted to Mishel on March 2 and March 9. The Alpren stock figures in that transaction. They are going to try to show as their defense that Mishel duped Miller by getting loans on a corporation which he no longer owned at the time.

The Court: Does the bank account of Zenith have anything to do with that?

Mr. Rosenblum: I cannot see it, Judge.

Mr. Hallinan: No.

The Court: I——

Mr. Hallinan: Yes, Zenith figures in their defense in this way——

Mr. Rosenblum: What?

Mr. Hallinan: There were various accounts at the bank which they will try to develop and show were (755) perfectly legitimate accounts and the

relationship between Miller and Mishel was that of president and client of a bank, and that is what he relied on when Mishel brought in these bonds.

I think Mr. Rosenblum can tell you that again. He did on his opening statement. They are going into the Mishel Wine and Liquor, Berkshire Wine and Liquor, Zenith account, and several other business accounts. I think 90 per cent of it is defensive matter.

Mr. Rosenblum: I do not intend to go into those questions. It is merely testing his recollection. He worked for Mishel during a certain period of time. I forget what he said, but I will ask him. Something like two years. During that time I want to show his job was to bring envelopes, papers legitimately part of the business. I want to test his recollection. I do not want any particular item. The only reason I asked the question is he said Zenith. He brought that in. That is the only reason. So I followed it up by saying he brought it to other banks and I want to show he did bring other pspers.

The Court: I will let you go along and see what happens.

(756) (Proceedings were resumed, within the hearing of the jury as follows):

Mr. Rosenblum: Please read the question to the witness.

(Last question read.)

A. Am I to answer that question?

Q. Yes. A. Not that I know of.

Q. Is an employee—first tell us, were you an employee of Zenith or were you an employee of Mishel individually or were you an employee of some other corporation? A. Well, it's a hard question to answer, but Mishel was Zenith, Zenith was Mishel. That can be my only answer to you.

Q. And at that time did Mishel also have an interest in other companies or corporations? A. I would say yes.

Q. As an employee of either the corporation or the individual, did you also deliver envelopes to another bank other than this one?

Mr. Hallinan: I will object to this, your Honor.

The Court: Sustained.

Mr. Rosenblum: Exception.

(757) Q. Tell us all the duties that you had as an errand boy for Mishel, as you described it.

Mr. Hallinan: With relation to the Pennsylvania Exchange Bank there would be no objection. This question is the same question previously put but in another form. I will object to it on the grounds of relevancy unless it is limited to the Pennsylvania Exchange Bank.

The Court: I will let it extend beyond that.

(To witness) Tell us in general terms your duties, but don't specify any transactions in which you participated except those relating to the Pennsylvania Exchange Bank.

The Witness: (To Mr. Rosenblum): Your question, please.

Mr. Rosenblum: The stenographer will give it to you.

(Question read.)

The Witness (To Court): Shall I answer it now?

The Court: Yes. Answer it in general terms.

A. Being in the category of an errand boy was for deposits and delivering of certain items to the Pennsylvania Exchange Bank and to some of his so-called friends, associates of bookmakers and things such as that.

Q. And those people were clients of Zenith? (758) A. More or less, I would say.

Q. That is, the bookmakers? A. (Witness nods.)

Q. Was it the business to loan money to bookmakers? A. He was in the factoring business.

Q. Factoring business? A. That's right.

Q. Do you know whether or not he was factoring his accounts with several banks?

Mr. Hallinan: I will object to this, your Honor.

The Court: I will sustain it.

Mr. Rosenblum: Exception.

Q. Can you tell us whether or not he was factoring any accounts at the Pennsylvania Exchange Bank? A. I can't answer that question. I don't know the answer. I couldn't answer.

Q. You don't know what the fact is; is that right? A. That's right.

Q. Can you give us a yes or no answer as to whether or not you delivered envelopes to other banks?

Mr. Hallinan: I will object to this, your Honor—relevancy.

The Court: I will sustain it.

(759) Mr. Rosenblum: May I be heard at the bench, your Honor?

The Court: Sure. Come on.

(The following proceedings took place at the bench, not in the hearing of the jury):

Mr. Rosenblum: What I intend to prove are the duties of this witness; which I think would be a basis from which the jurors can determine whether or not his testimony should be given a particular degree of weight in the light of other duties which included similar things to those things he did at

the Pennsylvania Exchange Bank. For instance, I hope to be able to prove without giving names that during the course of his employment he also brought envelopes to other banks, that that might be a basis from which the jury may say he might be confused or they may want to weigh the credibility of the witness to determine what weight they should give it. So let us assume, for instance, and I do not know the facts at the moment, he brought a thousand envelopes—this is only an example—to everyone he brought to the Pennsylvania Exchange—that is, a thousand to other banks, sealed envelopes. I think that I should be given an opportunity to test his credibility, to test his recollection, to bring out these facts from which the jury could determine whether or not they care to accept his testimony as given (760) on direct examination.

Mr. Hallinan: I think that area is pregnant with other questions that could be argued to the jury on the basis of them, such as the area they wanted to get into before, that Mishel has duped other people, he has had multi transactions with other banks, and so forth and so on.

I thing there is a great enough area in which to test this man's recollection and so forth within the area which I am seeking to limit the interrogation.

The Court: I will go along with you. I will sustain the objection on this.

Mr. Rosenblum: Exception.

(Proceedings were resumed within the hearing of the jury as follows):

*Samuel Siegel—for Government—Cross*

By Mr. Rosenblum:

Q. Is it your testimony that during the period you were employed by Mishel, during the entire period you delivered six envelopes to the Pennsylvania Exchange Bank? A. I would say more or less.

Q. How many more would you say? A Maybe two more, may be one less. I mean I couldn't——

(761) Q. Two more or one less? A. Approximately that figure.

Q. And you say two or three might have been with theatre tickets? A. That's right.

Q. Over what period of time do you say you delivered these envelopes? A. The time that I was employed by Mishel.

Q. And what is that period? A. From '48 to '50.

Q. That means during the three years, '48 '49 and '50, you delivered, you say, approximately six envelopes—it could be two more or one less—of which two or three had theatre tickets; is that right? A. Approximately that, yes.

Q. Is that right? A. Yes.

Q. Tell us, the first envelope you delivered, what did it contain? A. I could very easily answer that. Money.

Q. You recall that? A. That's right.

Q. That was the first one? A. That's right.

(762) Q. It wasn't a theatre ticket? A. No.

Q. When was the first theatre ticket that you delivered? A. I couldn't remember that.

Q. That you don't remember? A. No.

Q. Can you tell us in point of time how much after the time that you say you delivered money that you delivered a theatre ticket? A. I would say a few months, perhaps, a couple of months. It would be hard for me to say exactly when.

Q. Have you a recollection? A. Pardon me?

Q. Have you a recollection? A. I would say a few months.

Q. Tell us the day when you delivered the first envelope which you say contained money. A. The date?

Q. Yes. A. I couldn't tell you that.

Q. Could you give it to us by month? A. I can tell you how I delivered it and why I delivered it.

Q. Did I ask you that? (763) A. Well, that is the only reason that makes me say I remember the first envelope. You are asking me a question. I am trying to pin-point it for you.

Q. I am asking you to pin-point it in time. A. I couldn't do that for you.

Q. You cannot pin-point it even by year? A. No, sir.

Q. Not even to the extent of the year? (764) A. By the year I would say it was the time that Zenith went into existence, the year that Zenith started in business.

Q. And what year was that? A. You would know that as well as I do. I don't remember offhand. I would say it was in '48.

Q. You say I know that as well as you do? A. I shouldn't have said it. Between '48 or somewheres around that time. Perhaps it might have been late '48.

Q. And at that time was it in connection with Zenith, a Zenith account at the Pennsylvania Exchange Bank that you produced an envelope? A. I said Zenith never had an account that I know of at the Pennsylvania Exchange Bank.

Q. Did not have an account? A. That I know of.

Q. Well, during the three years or so that you were with Mr. Mishel, did you ever learn that he had an account at the Pennsylvania Exchange Bank? A. Mishel had several accounts at the Pennsylvania Exchange Bank.

Q. There were a number of accounts, weren't there? (765) A. That's right.

Q. And there were some loans, too, that he had, didn't he?

Mr. Hallinan: I will object to this.

Q. At the Pennsylvania Exchange Bank he also had loans, didn't he?

Mr. Hallinan: I will object to this on the ground it is outside the scope of legitimate cross-examination, your Honor. Without saying any more, it is the same point I have expressed to your Honor time and time again.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. Did you have loans at the Pennsylvania Exchange Bank?

Mr. Hallinan: I will object to this on the grounds of relevancy, your Honor.

The Court: I will let it be answered.

Q. Did you have loans at the Pennsylvania Exchange Bank? A. Yes.

Q. And did you bring in money from time to time to pay those loans? A. No.

(766) Q. Did you pay the loans? A. No.

Q. You mean you obtained money from the Pennsylvania Exchange Bank and you never repaid it? A. That's right.

Q. When for the first time did you get such loan? A. When?

Q. Yes. A. I don't remember the year. I got a loan with Mishel's signature.

Q. Who got the money? A. Pardon?

Q. Who got the money? A. Mishel.

Q. Do you know whether Mishel sent any money down

with you to pay those loans? A. I know one or two payments were made on the loan, and that's all.

Q. Do you remember a little book, a little blue book, with coupons that was used at the time payments were made on loans? A. If that was the loan book, I imagine that would be it.

(767) Q. Do you remember that there was a loan book? A. Yes, there was a loan book.

Q. Do you recall whether or not you would bring money down in connection with payments on that loan book? A. I said I never made a payment on the loan.

Q. Can you tell us when you made that loan? A. Can I say when?

Q. Yes. A. I don't remember the date, the year.

Q. You remember about these envelopes, don't you? A. Pardon me?

Q. You remember these envelopes, don't you? A. Which envelopes?

Q. Was it before or after the envelopes were brought down by you? A. During the time.

Q. Did you have only one loan? A. Pardon me?

Q. Did you have only one loan? A. On my name, yes.

Q. Was that for $420? A. $420?

Q. Yes, the first one. (768) A. No.

Q. You say you don't recall whether you obtained a loan from the Pennsylvania Exchange Bank—I will give you a date—on December 28, 1948, for $420? A. For how much money?

Q. $420. A. I don't recall it.

Q. Would you say that you did not? A. Well, let me answer you the question this way——

The Witness: (To Court) Is it all right?

The Court: Yes.

Q. Can you recall it or not?

*Samuel Siegel—for Government—Cross*

The Court: Let him answer it.
(To witness) Answer it your way.

A. I would like to answer the question the way I want to answer it, if you don't mind.

Mr. Rosenblum: I submit he can——
The Court: Let him answer it.
Mr. Rosenblum: We have had other experiences where your Honor has indicated to the witness "You can answer it that way" and I have had to move to strike the answer.
The Court: I will take my chances.
(769) (To witness) You answer it your way.

A. Mishel on my name took loans, using my name. A loan I remember signing for the Pennsylvania Exchange Bank was one for about $1200 or so, or it may have been the $420 one you say and then may have been increased again by Mishel. I do not know. That is the only way I can answer that question to you.

Q. Do you know whether the loans in your name at the Pennsylvania Exchange Bank were December 28, 1948, for $420, March 1, 1949, for $1080, and on January 6, 1950, for $1530? A. I wouldn't say I signed for those loans. Mishel was using my name. He used to sign my name.

Q. Did Mishel do those things? A. Yes, sir.

Q. Do you know whether he sent down any money in connection with the payments of loans through you to the Pennsylvania Exchange Bank? A. Are you speaking of the payments to a loan?

Q. Yes. Do you know whether Mr. Mishel from time to time sent down money—you say he sent down money to the Pennsylvania Exchange Bank; is that right? A. Yes, that's right.

(770) Q. You say over the three-year period, you now fix it at about two or three times under the way you gave it to us before? A. Fix what?

Q. The number of times you say you brought down money. A. What money are you referring to?

Q. In an envelope. A. Mishel never gave me payments for a loan in an envelope.

Q. He never gave you payments for loans in an envelope? A. That's right.

Q. You brought money down to the Pennsylvania Exchange Bank? A. That's right.

Q. Is that right? A. That's right.

Q. At that time were those loans given by the Pennsylvania Exchange Bank in your name to Mr. Mishel? A. It's very possible.

Q. Do you have any doubt about it? A. I don't have no doubt at all.

(771) Q. That means you are sure it was so; right? A. I would say 99½ per cent.

Q. Tell us the second occasion. You say the first time you brought down was money, of the times you said you brought envelopes down; right? A. (Witness nods.)

Q. Tell us the second occasion that you brought down an envelope. A. Are you asking me for a time?

Q. Yes, that is what I am asking you. A. I can't answer you no time.

Q. Can you tell us whether on the second occasion there were theatre tickets or money in the envelope? A. I couldn't answer that either.

Q. You are sure that Mr. Miller did not open the drawer of his desk and put the envelope in his desk? You are sure, say the first time you brought money down, that he did not open the drawer of his desk and put it in his desk? A. The first time?

Q. Yes. A. No, he didn't.

Q. You remember now specifically the fact that (772)

when you gave him an envelope while you were standing there he put it in his pocket? A. He wasn't standing. He was sitting at his desk.

Q. Sitting at his desk? A. That's right.

Q. That you remember definitely? A. Distinctly.

Q. And tell us on the second occasion approximately when it was that you brought down an envelope. A. I can't answer you a time.

Q. You don't remember that? A. The time I couldn't give you.

Q. You cannot even give us an approximate time? A. It wouldn't be fair to me to give you a time.

Q. It would not be fair to you? A. That's right, because I would only be telling something that wasn't true.

Q. I do not want you to say anything that you cannot testify to. A. That's right.

Q. Take the third occasion. What was it that you brought down, theatre tickets or money? A. Again I can't answer you because I couldn't (773) be telling you a time limit.

Q. I do not ask you now for the time. I am asking you what you brought on the third occasion. A. I don't remember.

Q. You say in all you brought down envelopes on five or six occasions? A. More or less, yes.

Q. How much less than five or six could it be and how much more than five or six could it be? A. As I answered you before, perhaps one or two more or one or two less.

Q. So it could be one or two on the increase side or on the decrease side of the five or six that you testified about; is that right? A. That's right.

Q. And you say that you brought down theatre tickets on two or three occasions? A. That's right.

Q. Right? A. That's right.

Q. Now, can you go to the fourth occasion, if there was

a fourth occasion, and tell us whether you brought down theatre tickets or money? A. There was a fourth occasion, but I can't (774) give you no time.

Q. Can you tell us what it was? A. You are asking me something that I can't answer you.

Q. Then you just say you cannot answer; but I am asking the question and if you can answer, please give us an answer. A. I say no.

Q. You say "No," meaning you cannot answer? A. That's right.

Q. That means you have no recollection? A. I have no recollection of the time.

Q. Have you a recollection as to whether on the fourth occasion you brought down money or tickets? A. No.

Q. So you don't have a recollection as to the fact either as to what it was?

Mr. Hallinan: I object to the form of this, your Honor.

Mr. Rosenblum: I will withdraw it and change the form.

Q. So that on the fourth occasion you cannot tell this Court and jury as to whether you brought down money or theatre tickets? (775) A. I know I brought down envelopes——

Q. Will you answer my question, please, as to the fourth occasion?

Mr. Hallinan: He is trying to.

Mr. Rosenblum: I ask, too, your Honor, that the witness be directed to answer my question as I put it. I asked a question as to whether or not he can tell us on the fourth occasion whether he brought down money or theatre tickets. He can tell us yes, no, or tell us what the answer is.

The Court: I won't tell him to say yes or no.

(To reporter) Read the incomplete answer back.

(To witness) And then you complete it.

(Last answer read.)

The Witness: You want me to finish my paragraph or answer?

The Court: You finish the answer.

A. I know I brought down envelopes, and I know several times there was money inside the envelopes.

Q. Now I will put the question again to you and ask you can answer my question.

Mr. Rosenblum: I ask that the other answer (776) be stricken out as not responsive. I indicated to the Court I believed it would not be responsive, and that is why I made the statement I did at that time.

The Court: I will let it stand. In other words, I think it is very clear what the testimony is, and I will let it stand as it is.

Mr. Rosenblum: I take exception.

The Court: All right.

Q. You say that you were on probation for how many years? A. I was put on probation for two years and my probation officer, after a period of a year and a half, said that I would be all right because of my good behavior, and so forth.

Q. In other words, you did not have to report after a year and a half; is that right? A. That's right.

Q. And do you know whether or not your probation in fact extended for a five-year period even though you only reported for a year and a half? A. I am not familiar with that, so I can't answer you.

Q. Can you tell us whether or not at the time (777) you

were first sentenced, whether you were given a jail sentence? A. Yes, I was.

Q. Did you at that time cooperate with the authorities and did you then get a suspended sentence? A. No, that wasn't the reason.

Q. Were you told at any time to do that? A. To cooperate with the authorities?

Q. Yes, as part of your sentence. A. You will have to make that more clear to me. I don't understand you. I am sorry. I don't understand what you are trying to ask me.

Q. Whenever you don't understand my question, please tell me that.

During the time while you were on probation, were you in touch with either the State or the Federal authorities? A. I believe I was.

Q. And during that time were you questioned concerning these matters——

Mr. Hallinan: Your Honor, I am going to object——

Mr. Rosenblum: Let me finish my question.

Q. —concerning the matters that you testified (778) about this morning?

Mr. Hallinan: I am going to object to this unless it is limited to the Federal authorities. We have been through this in another aspect and I think it is confusing and I do not think it is relevant to go into both areas.

The Court: I will let Mr. Rosenblum go ahead. Overruled.

Mr. Rosenblum: Will you read the question to the witness?

(Question read.)

A. No, I don't think so.

Q. You say you don't think so? A. That's right.

Q. That is, during the period of your probation you did not tell any Government officer that you delivered envelopes to Mr. Miller in the way you have described it today? A. I don't recall doing it.

Q. Will you think for a moment and see whether or not while you were on probation you were being questioned concerning this matter that you testified about this morning?

Mr. Hallinan: At this point I will object (778a) to this on the grounds of relevancy. I do not know how to express this in front of the jury. I think acts subsequent to the sentence are irrelevant.

The Court: I will overrule the objection.

Mr. Rosenblum: Mr. Stenographer, would you read the question, please.

(Question read.)

A. I don't think so, Mr. Rosenblum.

(779) Q. You aren't sure? A. I am not sure, no, I am not. I tell you why I can't, because of the fact that I was—my income tax—the tax people, I had trouble with that, and I may have gone to—I was only seeing my probation officer once every two months, not the same as every other fellow, every week. So I couldn't recall what your question was.

Q. Regardless of the number of times that you saw your probation officer—I will withdraw that.

Now, will you tell us whether or not the last item that I referred to and brought to your attention, the fourth occasion you brought down an envelope, whether Mr. Miller put the envelope in his inside coat pocket? A. I wouldn't say before. I said he did it practically every time I went down there.

Q. You recall that definitely, is that right? A. That is right.

Q. Not that he put it in his desk or anything? A. I would say he put it in his coat pocket.

Q. You said you were convicted in connection with a violation of the Federal Law, is that right? A. That is right.

Q. Did you on any occasion bring down envelopes to the Pennsylvania Exchange Bank in connection with anything other than the money or theatre tickets that (780) you referred to? A. I would have to answer yes.

Q. And did you bring down papers in connection with any business transaction that Mr. Mishel or one of his corporations had at the Pennsylvania Exchange Bank? A. Papers?

Q. Papers of any kind, such as notes—A. Yes, yes.

Q. Notes of different kinds? A. Yes.

Q. And did you on occasions bring down papers other than notes? A. I wouldn't say other than notes. It was all pertaining to the bank——

Q. It was what? A. It was all pertaining to the bank, when you speak of papers.

Q. Yes, papers. Were there any transactions that Mishel or any of his companies or corporations had that made it necessary for you as the errand boy to bring down envelopes or papers to the bank? A. Any time I would go down to the Pennsylvania Exchange Bank with anything outside of something that (781) would be personal to someone else would never be in no envelopes.

Q. It would never be in an envelope? A. Unless it was something personal to someone else.

Q. You mean if you brought down several notes at one time you remember they were loose? A. That is right, folded up.

Q. You recall definitely that it was never put in an en-

velope? That you have a definite recollection of? A. I couldn't say it was definitely never put in an envelope. But I say that anything that wasn't personal to an individual at the bank was either put in my pocket loose, such as I am carrying this folded up, or put into a Manila envelope where I could just slide it out and give it to whoever I had to give it to.

Q. Did you on any occasion bring down papers, notes that were similar to notes which you did put into an envelope. A. Seal it?

Q. No. Sealed or opened or closed or—A. Possibly.

Q. Now, in connection with your conviction did Mr. Mishel have anything to do with that?

Mr. Hallinan: I object to this, your Honor.

(782) May we approach the bench?

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. In what court were you convicted? A. The Federal Court.

Q. Was Mishel a co-defendant with you?

Mr. Hallinan: I object to this, your Honor.

The Court: Sustained.

Mr. Rosenblum: Exception.

Q. What was the crime that you pleaded guilty to? A. Forgery of stocks and bonds.

Q. Forgery, or transporting stolen stocks and bonds? A. Forgery.

Q. And did Mr. Mishel tell you to sign whatever bonds you signed?

Mr. Hallinan: I object to this, your Honor, on the grounds of relevancy.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception. No further questions.

Mr. Hallinan: Just one question.

Redirect examination by Mr. Hallinan:

Q. Mr. Siegel, do you recall that I called you at your home Sunday night? (783) A. That is right.

Q. Mr. Rosenblum asked you the question, at least a series of questions. He contacted you, didn't he? A. That is right.

Q. He asked you to come down? A. That is right.

Q. You said you wouldn't until you had spoken to me? A. Correct.

Q. Will you tell the Court and jury what I said to you Sunday night on the telephone, please?

Mr. Rosenblum: I object to that.

The Court: I will overrule the objection. Go ahead. In so far as it had anything to do with Mr. Rosenblum's conversation.

Mr. Hallinan: Yes.

The Witness: May I have that question?

Mr. Rosenblum: I will withdraw my objection.

The Witness: May I have the question, please?

The Court: Yes.

(Question read.)

A. You told me that you couldn't tell me what to do, that I would have to, whatever I want to do is what I should do on my own.

(784) Q. You specifically asked me for advice as to whether or not you should go down and see Mr. Rosenblum? A. I did, I did.

Q. And in response to that I told you what you have just said? A. That is right.

Mr. Hallinan: You may inquire.

The Court: All right. That is all, Mr. Siegel. Thank you.

We will take a ten minute recess now. Don't discuss the case.

(The jury retired.)

The Court: We will start at a quarter of 12.

(Recess.)

(Jury present.)

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NORTON SCHNABEL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Schnabel, how are you employed presently? A. I am manager of a cabaret.

Q. What is the name of that cabaret? A. Club Baby Grand.

Q. Where is it located? (785) A. 1274 Fulton Street, Brooklyn.

Q. How long have you worked there? A. About two and a half years.

Q. Where did you work prior to that time? A. London Motors.

Q. Where is that located? A. Also in Brooklyn, 475 Flushing Avenue.

Q. What did you do there? A. Office manager.

Q. How long did you work there? A. About four years.

Q. Where did you work prior to that time? A. I worked for Irving Mishel.

Q. What period of time did you work for Irving Mishel? A. From about December, 1949 up until about March, '51.

Q. What did you do for Irving Mishel? A. Took care of his bank errands, books, general work.

Q. Now, in connection with taking care of his bank errands, did you ever go to the Pensylvania Exchange Bank for him? A. Yes, I did.

(786) Q. At his instructions did you ever deliver envelopes——

Mr. Rosenblum: I don't think we need leading questions at this time.

The Court: I sustain the objection.

Q. Did you ever deliver anything at his instructions to Mr. James W. Miller, president of that bank? A. Yes, I did.

Q. What was that? A. Envelopes.

Q. How many times did you deliver envelopes to Mr. Miller? A. I would say about maybe fifteen times during the course of my working for him.

Q. Did you also make deposits at the bank? A. Yes, I did.

Q. In what form would you make the deposits; how would you make the deposits? A. Usually cash.

Q. Any other documents? A. No, just deposit slip and the money.

Q. In connection with the envelopes, would Mishel say anything to you when he asked you to deliver them to Mr. Miller?

(787) Mr. Rosenblum: I object to the question. I think it is clear that it was not in the presence of the defendant.

The Court: I will sustain the objection.

Q. Mr. Schnabel, where did Mishel have his office during this period of time? A. 570 Seventh Avenue.

Q. Did you ever see the defendant James W. Miller in that office? A. I believe I did once.

Mr. Hallinan: You may inquire.

Cross-examination by Mr. Rosenblum:

Q. You said you believe you did? A. Yes. It was a long time ago and, I mean, it is something I didn't pay attention to at the time, but I believe I have seen him at the office once.

Q. You believe you saw him once? A. Yes.

Q. You are not sure? A. I can't be positive; it has been a long time ago.

Q. You say you brought envelopes? A. Yes.

Q. What was in the envelopes? (788) A. I couldn't tell you.

Q. You say you can't tell us what was in the envelopes? A. No; they were sealed.

Q. You wouldn't know just what was in it, whether it was paper, money, or anything else? A. No.

Q. Is that right? A. No; I wouldn't want to surmise that. I am not sure, so I wouldn't say.

Q. In fact, you were tested, were you not, by Mr. Hallinan and Mr. Milenky to see whether you could determine whether the envelopes had money or papers? A. Yes, if I could tell.

Q. What is that? A. Yes, to see if I could tell.

Q. You were able to tell, weren't you? A. Yes, as a rule I can, but I wouldn't——

Q. Do you remember an occasion when Mr. Milenky and Mr. Hallinan gave you two envelopes? A. Yes.

Q. And asked you to see if you could tell? A. That is right.

Q. And you were able to tell? (789) A. At that time, yes.

Q. So you can't help either way as to what was in the envelopes? A. I wouldn't want to take a guess at it. A man's future is at——

Q. Do you remember having a conversation with Mr. Mishel about your making an affidavit in which he wanted you to say that you gave money to Mr. Miller? A. Yes, I do.

Q. Was that after he had gotten a thousand dollars for your mother? A. Yes.

Mr. Hallinan: I object to this, if your Honor please.

Mr. Rosenblum: I am leading up to something.

The Court: I think you can lead up to it in some other way. I will sustain the objection and strike out the answer.

Q. Well, in connection with the affidavit, did Mishel tell you if you went up to Bierman's office, signed an affidavit saying that you gave money to Miller, that he would give you a thousand dollars for your mother?

Mr. Hallinan: I object to this on the form of the question, and also——

(790) The Court: Sustained.

Mr. Hallinan (Continuing)—on the ground that Mr. Rosenblum has objected to any statement of Mishel on the ground that it was hearsay, and I make the same objection, your Honor.

Mr. Rosenblum: Hearsay to whom? Because the defendant isn't there is one thing, he wasn't present. And the defendan't shouldn't——

The Court: I will sustain it on the first ground.

Mr. Rosenblum: On what?

The Court: I sustain the objection on the ground that it is leading.

Mr. Rosenblum: On cross-examination?

The Court: It is not cross-examination. There is no direct on this subject. This is your——

Mr. Rosenblum: I think it leads from it. He is a hostile witness.

Mr. Hallinan: Oh, no.

Mr. Rosenblum: I will withdraw that.

The Court: I don't make any such finding.

Mr. Rosenblum: All right.

Q. Tell me, Mr. Schnabel, did you ever sign such an affidavit?

(791) Mr. Hallinan: I object to any further inquiry about it on the ground of relevancy, your Honor.

The Court: I will sustain the objection. I don't know, frankly, what affidavit we are talking about at the moment.

Q. Did you sign an affidavit to the effect that you delivered money to Mr. Miller, money given to you by Mr. Mishel to deliver to Mr. Miller?

Mr. Hallinan: I object to this.

The Court: Sustained.

Mr. Rosenblum: I have no further questions.

The Court: All right.

Mr. Hallinan: No further questions.

The Court: All right.

Mr. Hallinan: Now we have reached the other problem that I informed you about this morning.

The Court: Can you start with your witness or is he——

*Colloquy of Counsel*

Mr. Hallinan: No. The witness is actualiy on the detail of the——

The Court: He will be gone all day, then?

Mr. Hallinan: No. He will be tied up this morning but he will be available at 1 o'clock, he told me close to 1 o'clock.

(792) The Court: He will be available?

Mr. Hallinan: Yes.

The Court: Then I think, although it may upset your plans, and I hope you haven't made any appointments, the thing for us to do is to recess now for lunch and resume at 1:15, if that will give you time. How about you?

Mr. Hallinan: I am sorry, your Honor. I think today, if your Honor pleases, we might have a longer lunch hour. He told me he was a little doubtful that they——

The Court: All right. This witness has other duties than coming here this morning which are equally important. Then we will make it 2 o'clock to give him a chance to get here.

All right. Don't discuss the case.

(Jury retired.)

(Recess until 2 o'clock p. m.)

(793)

AFTERNOON SESSION

(Jury in box.)

GEORGE J. SERSHEN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Sershen, by whom are you employed? A. By the United States Secret Service.

Q. And how long have you been so employed? A. Since March 1937.

Q. What is your official title? A. Special agent.

Q. Now, did there come a time in the course of your official duties sometime in 1950 when you were assigned to the case of the uttering and forgery of certain bonds registered in the name of Chernoff? A. Yes, sir.

Q. Do you recall when that was? A. That was during the latter part of July 1950.

Q. Now, do you recall in connection with that investigation that you went to the Pennsylvania Exchange Bank? (794) A. Yes, sir, I did.

Q. Do you recall the first time you went there? A. I went there on August 3, 1950.

Q. And what did you do at the bank on that day? A. On that date I saw Mr. Brennan and I showed him the bonds or, rather, photostatic copies of the bonds, and I asked him if he could assist me in telling me just how the bonds were negotiated there, and he advised me that the bonds had been accepted for redemption by three tellers, a Miss Graef, a Mr. Horan and a Mr. Lucey, but that Miss Graef and Mr. Horan had resigned from the bank.

I asked him to obtain for me the addresses of Miss Graef and Mr. Horan, which he did. At the same time I asked him to furnish me with photostatic copies of the redemption slips used in the negotiation of these bonds.

Q. Thereafter did you at any time go back to the bank? A. Yes, I did, several days later, on August 9, 1950.

(795) Q. And did you see anyone at the bank at that time? A. Yes, sir.

Q. Who? A. I saw Mr. Brennan, Mr. Lucey, and Mr. Miller, the president.

Q. Now on that day did you have a conversation with Mr. Miller? A. Yes, sir, I did.

Q. What was that conversation? A. Well, the conversation was short. I showed him the photostatic copies of these 59 bonds issued in the name of Chernoff and I asked him if he knew anything about the bonds. And he told me no, that he had nothing to do with the bonds and that the tellers cashed the bonds. He suggested that I see the tellers about them.

Now that was the extent of my conversation with Mr. Miller on that day.

Q. Now on that same day did you obtain anything from Mr. Brennan at the bank? A. Yes. In accordance with my request he provided me with photostatic copies of the redemption slips.

(796) Q. Thereafter, sometime in October 1950, did you interview Miss Graef? A. Yes, I did.

Q. Where did you interview her? A. At her home, in Jackson Heights.

Q. Some time thereafter did you interview Mr. Horan? A. I did.

Q. Do you recall when that was? A. That was on October 5th and it took place at the Bensonhurst Bank, in Brooklyn, where he was working at the time.

Q. Now, on October 5th did you see anyone else in connection with this case? A. Well, later that same day I returned to the Pennsylvania Exchange Bank on 48th Street for the purpose of seeing Mr. Miller but he wasn't there and instead I saw Mr. Brennan.

Q. On Octber 6, 1950, did you in the company of Special

*George J. Sershen—for Government—Cross*

Agent Edward Sweeney place under arrest one Irving Mishel? A. Yes, sir.

Q. And did you say anything to Mr. Mishel that day?
(797) A. Yes, sir. I questioned him about these, about the——

Mr. Rosenblum: I object to any statement out of the presence of the defendant.

Mr. Hallinan: May we approach the bench? I won't say another word. I will tell you why it is relevant, your Honor.

The Court: All right, come up.

(The following proceedings were had at the bench out of the hearing of the jury.)

Mr. Hallinan: I will make my offer of proof. This witness is about to testify that he informed Mishel that the three tellers at the bank had identified him as the one who brought the bonds into the bank. I don't offer this statement for the truth or falsity of that statement. I offer it in this connection: the witness Mishel has testified that after he was released on bond he went back to Miller at the bank, or met him somewhere, and said that "I understand that these three tellers have identified me. And, what's with it?" And so forth and so on. I offer it for that purpose.

The Court: I don't think we need that. In other words, why Mishel said what he said to Miller (798) has no bearing on the——

Mr. Hallinan: It is going to make this tremendous difference. It adds some support to the fact that Mishel testified to that effect, because their whole defense is going to be that Mishel is lying.

The Court: If as a result of their defense we need Sershen again, we can get him on rebuttal.

Mr. Hallinan: Surely.

(The following took place in the hearing of the jury.)

By Mr. Hallinan:

Q. On October 6 did you go back to the Pennsylvania Exchange Bank? A. Yes, sir, I did.

Q. Who did you see at the bank on that day? A. Mr. Miller.

Q. Did you have a conversation with him on that day? A. Yes, sir, I did.

Q. Will you tell the Court and jury what was said by you and what was said by him? A. Well, I showed him these copies of the bonds again and I asked him whether he recalled anything (799) on these particular bonds.

And he said that he had been thinking about the matter and that he recalled that on two occasions Irving Mishel came into the bank with bonds and that on one of these occasions he remembered the name on the bonds was Chernoff. He said that Mishel on those two occasions had been accompanied by another individual and that the individual remained some distance away from his desk.

I asked Miller if he saw this particular individual whether he could describe him. And he said no, that he couldn't. But Mishel had told him that that person was named Chernoff and was a friend of his and Mishel asked him on these occasions to cash these bonds as a favor for him. And Mr. Miller said that he did so.

At the same time, I asked Mr. Miller for, and he gave me the original bond redemption slips. And I called his attention to the fact that the name Thomas Young appeared on these slips as identification. And I asked him how he could have accepted for identification anyone in the name of Thomas Young from a person named Miller while the bonds were issued in the name of Chernoff.

(800) And he said he didn't recall the exact transaction.

So Mr. Sweeney was with me there at the time and he sked him I think whether—he asked Mr. Miller whether r. Miller spoke to this person named Chernoff.

And Mr. Miller said no.

I told Mr. Miller that in view of the circumstances it as obvious to me that he had not followed the Governent, the Treasury Department regulations in cashing nds, that he should have demanded identification from e individual in whose name the bonds were issued.

When I asked Mr. Miller if he knew Thomas Young, he id no, but that he thought Young was a friend of Mishel's d that he worked in a restaurant, Roth's Restaurant, on th Street and Seventh Avenue. I don't recall anything rther now.

Q. Now this conversation that you have just testified to, l that happen on October 6th or October 10th? A. Oh, at happened on October 10th, that particular——

Q. Going back to October 6th, did you visit the (801) nk on that day? A. Yes; I saw Mr. Miller on that parular day.

Q. What was said on that day? A. Well, on that day I owed him the bonds again. And he told me that he ln't know anything about those bonds, and he suggested at I see the tellers on them. I did not see anyone else ere at the time. I just left the bank.

Q. Was anything else said at that time by either you or . Miller? A. Yes. I told him then, too, that it didn't pear to me that he had used proper care in accepting ose bonds for redemption. And he told me that he ln't remember the transaction, he didn't know anything out those bonds, that the tellers cashed the bonds.

(802) Q. Now, you have already testified to the conversion of October 10. Did you thereafter go in the company of Agent Sweeney to Roth's Bar and Grill? A. ter on October 10 we went to that particular restaurant.

Q. And what did you do there? A. We asked for the

manager and spoke to him, and we asked him whether he knew a Thomas Young.

Mr. Rosenblum: I object to any statements not in the presence of the defendant.

The Court: I will ask another question.

Q. Could you locate Thomas Young at Roth's Bar and Grill? A. No, sir, I could not.

Q. Did you attempt to locate him at any other place? A. Yes, I did.

Q. Where? A. At 515 Seventh Avenue, New York City.

Q. Where did you get that address? A. The address I got from Mr. Miller. It was on Mr. Young's signature card at the bank.

Q. Could you locate Mr. Thomas Young at 515? A. No, sir.

(803) Q. Now, Agent Sershen, on October 10, 1950, did you show to Mr. Miller a photograph of Irving Mishel? A. No, sir, I didn't have any.

Q. On October 6, 1950, did you show to Mr. Miller, when you spoke with him on that date, a photograph of Irving Mishel? A. No, sir, I did not.

Q. On August 9, 1950, when you spoke with Mr. Miller, did you show him a photograph of Irving Mishel on that date? A. No, sir.

Mr. Hallinan: You may inquire.

Cross-examination by Mr. Rosenblum:

Q. Did you have a photograph of Mr. Mishel?

Mr. Hallinan: I am sorry. I did not hear that question.

The Court: Read the question back.

(Question read.)

A. When, sir?

Q. At any time. A. After his arrest. On the day of his

arrest, October 6, I took photographs of Mr. Mishel. Now, usually we have to wait a week or ten days before these photographs (804) are developed, and about that time I probably had half a dozen or more photographs of him.

Q. That was after the arrest? A. That was after the arrest.

Q. You say you obtained the name, Mr. Mishel, from three tellers? A. Yes, sir.

Q. And then you got information as to his address? A. I got information as to his address from the bank, sir.

Q. From the bank? A. Yes, sir.

Q. Did you check the Bureau's files to see whether or not he had a criminal record?

Mr. Hallinan: I will object to this on the grounds of relevancy, your Honor.

The Court: I will sustain it.

Mr. Rosenblum: Exception.

Q. When you went to arrest Mr. Mishel did you know what he looked like? A. No, sir. I had a general description of the gentleman, that's all.

Q. Now, when you came back to the bank on the 10th, you then did have pictures of Mr. Mishel? (805) A. No, sir, I don't think so. I can't remember positively. I told you that I took pictures of him on October 6 and that it usually takes perhaps a week or ten days before the pictures are developed. Now, I didn't show Mr. Miller a photograph because I knew Mr. Miller knew Mishel. There was no reason for it at that time.

Q. You are certain you did not come into the bank on one occasion and tell him you arrested Mr. Mishel at that time and showed him a photograph? A. No, sir, I don't recall ever showing him a photograph.

Q. You did talk with him about the fact you arrested Mr. Mishel? A. I don't recall telling him that I arrested Mishel.

Q. Would you say you did not tell him? A. I wouldn't say that, no, sir. I just can't remember whether I did or not.

Q. Your principal duty, was it not, as an agent, was to obtain or to locate, if you could, the forger and the person or persons who stole bonds? A. My duty is to make an investigation into the theft, forgery, and fraudulent negotiation of the bonds. If they are merely stolen and never forged, I have nothing (806) to do with it, sir. They have to be first forged.

Q. If they were forged then you had jurisdiction? A. Yes, sir.

Q. You knew, of course, by the time you went to the bank that the bonds had been forged? A. Oh, yes, sir.

Q. You had contacted the Chernoffs and you learned from them that they had not signed the bonds? A. Well, I don't know whether I had contacted them before the arrest or after the arrest, but I did have affidavits from them that were sent to me by Washington in which they stated that the bonds had been stolen.

Q. In other words, you knew at the time that the bonds had been stolen and also had been forged? A. Yes, sir.

Q. So that you say one of your primary purposes or one of the items which gave you jurisdiction is when you found that a particular Governmental document had been forged, such as specimen money or bonds; is that right? A. That's true, yes, sir.

Q. So that one of your primary purposes in apprehending Mishel had been accomplished? A. Yes, sir.

(807) Q. And you had taken him down and arraigned him on the charge of forgery? A. No, it wasn't on a charge of forgery. I think we charged him——

Q. I don't know what. You tell us what it was. A. We arraigned him on the charge of fraudulently uttering those bonds, not on the forgery.

Q. Fraudulently uttering? A. Yes, sir.

Q. When you went back to the bank, then, as you told us before, you had the forger? A. Yes.

Q. Do you recall whether or not at that time you talked about closing up the case? Now having had Mishel, did you talk about trying to close up the matter with Mr. Miller? A. No, sir, I don't recall that. I would not have made a remark like that. I know that.

Q. What is that? A. I know I could not have made a remark like that.

Q. Did you say anything to Mr. Miller with regard to the identification of the other person that (808) had been discussed? A. You mean Thomas Young?

Q. No, Chernoff, the man represented who himself or he said represented himself to him as Chernoff. A. I asked him whether he had made any attempt to identify the person who Miller claimed was Chernoff, and Mr. Miller said no, that he cashed the bonds for Mishel because he knew Mishel and he did it as a favor for him.

Q. And did he tell you that Mishel had actually brought along another person on the occasion when he cashed the bonds for Mishel? A. Yes, sir, he did.

Q. Did you say to him, "Since you say you knew Mishel and you were doing it for Mishel, what was the purpose of another man being there"? A. Well, he already told me what the purpose was. He said that Mishel came to him with these bonds and said that the owner of the bonds was a gentleman some place in the front of the bank, would he cash the bonds as a favor for him, Mishel.

Q. So that he in effect said to you that Mishel said to Mr. Miller that there was a person in the bank who was the alleged owner of the bonds? (809) A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And do you recall whether or not on the occasion when you talked with him about the arrest of Mr. Mishel and the fact that you already had put him under arrest— A. I don't—

Mr. Hallinan: I will object to the form of the question.

The Court: Sustained.

Q. Did you discuss with Mr. Miller the fact that you had put Mr. Mishel under arrest? A. I don't recall telling him that I placed Mr. Mishel under arrest.

Q. Did you tell him you took him into custody? A. It is the same thing, custody or arrest. I don't recall that I told him I placed Mr. Mishel under arrest.

Q. You say you don't recall that? A. No. I wasn't volunteering any information to Mr. Miller.

Q. Would you say that you told Mr. Miller nothing about Mishel on that occasion? (810) A. On October 6th I didn't tell him anything about Mishel.

Q. How about October 10? A. Yes, I told him about the bonds being cashed by Mishel there.

Q. Was that the first time that you discussed with him the fact— A. That is the first time——

Q. —that Mishel's name came in? A. That is the first time, as near as I remember, that I mentioned Mishel's name to Mr. Miller. That was on October 10.

Q. Was that the first time that either you or Mr. Miller mentioned the name Mishel? A. Yes, sir. That is October 10.

Q. You were there on October 6? A. Yes, sir, I was.

Q. And you say at that time he said he had been thinking about it? A. No, he hadn't been thinking about it on October 6th. He had been thinking about it on October 10th.

Q. Is the 10th the time? A. My conversation with Mr. Miller on October 6th (811) was very brief.

Q. At that time there was no discussion about Mishel? A. No, sir.

Q. You say that occurred, then, on October 10; right? A. Yes, sir.

*George J. Sershen—for Government—Cross*

Q. I think when Mr. Hallinan was examining you you testified with regard to events that occurred on one prior date, do you remember? A. Yes.

Q. That is what I was confused about. Will you please give me those again. What occurred, as you say they occurred, on October 6 and October 10, giving it to me in the order, giving me the earlier date first? A. On October 6, that was the day I arrested Mishel, I saw Mr. Miller again and I showed him these bonds, and again I asked him whether he knew anything about the bonds; and then he told me that he didn't know anything about the bonds, he didn't remember them, that it was not his function to cash bonds, that the tellers did so, and he suggested that I see the tellers. So I left him.

(812) Now, on October 10 I was with Mr. Sweeney when I saw Mr. Miller. On that date I showed him the bonds again and I asked him about them, and it was then that he said that he recalled that on two occasions Mishel had come into the bank with bonds, that he recalled on one occasion the bonds that Mishel presented to him were in the name of Chernoff. He recalled that Mishel had told him or, rather, Mishel had come in accompanied by some other individual who was in another part of the bank and the Mishel had told him that that individual was Chernoff and that would he, Miller, cash these bonds as a favor for Mishel.

(813) Q. Now did you learn at any time that on December 26, 1951, Mr. Miller advised the Treasury Department that he was informed that the bonds were properly cashed in accordance with the decision laid down in the official circular? Did you learn that at all? A. Some time after the arrest after October 10th my office received a letter from the Treasury Department in Washington indicating that the bank, the Pennsylvania Exchange Bank, was resisting efforts to pay the $6000 or the $7000, whatever the amount was involved—I don't remember the exact——

Q. $6684.50. A. I don't remember the amount, I don't remember the exact amount in the letter. At any rate, there was a request made in that letter for an additional report from me concerning the negotiation of the bonds and the part that Mishel and Mr. Miller played. And I submitted a report in answer to that letter. That may be the letter you are referring to, but I cannot remember the exact date.

Q. You mean your letter. A. No; the letter from the Treasury Department advising that the bank was resisting efforts, probably (814) based on Mr. Miller's statement that he had negotiated them properly.

Q. In other words, wasn't it the fact that during the entire time that you referred to and up to the time when the bank received the money from the bonding company and paid the Treasury Department, the bank took the position through Mr. Miller that the bonds, the Chernoff bonds, had been properly cashed?

Mr. Hallinan: I object to the form of the question as to relevancy, your Honor.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. Did you see Mr. Miller after October 10th? A. No, sir.

Q. You didn't see him after that? A. I did not.

Q. Now did you at any time learn——

Mr. Rosenblum: Will you give me the exhibit, December 26th?

Q. Did you at any time know that Mr. Miller had advised the Treasury Department that he was informed that your investigation showed that the bank was not negligent in cashing the bonds? (815) A. I recall only that one

letter from the Treasury Department to my office in which the bank was resisting and in which it was stated that the bank was resisting efforts to pay that particular amount of money because the bonds were allegedly properly negotiated. That is all that——

Q. That is, the bank claimed they were properly negotiated? A. Yes, sir.

Q. I show you 22 in evidence, Exhibit 22, and I ask you whether that is the letter which you saw? A. No, [redacted] did not see this letter. No, sir.

Q. Is this the first time that you see this letter? A. This is the first time I have seen this letter, sir.

Q. This is the first time you heard that a letter was actually written by Mr. Miller in which he claimed that he was informed that the bonds were properly cashed? A. Well, again, I go back to that letter I received from the Treasury Department to my office requesting additional investigation. In that letter (816) it was stated that the bank was resisting efforts. Now, Mr. Miller's name might have been mentioned; I don't recall.

Q. But did that letter have anything in there which said what the Treasury Department was informed by letter of December 26, 1951? Look at the letter that you have in your hand. A. I am sorry, sir, I can't recall.

Q. In other words, you have no recollection of that either way? A. No, sir.

Q. That would be a fair statement? A. Yes, sir.

Q. Now you filed a complaint against Mr. Mishel, did you not? A. Yes, sir, I did.

Q. Did you recommend that the complaint be dismissed?

Mr. Hallinan: I will object to this on the grounds of relevancy, your Honor. He has nothing to do with recommending.

Mr. Rosenblum: I am asking him what he did, if he did anything.

Mr. Hallinan: It is not their function. (817) I will object on the grounds of relevancy, your Honor.

The Court: I will let him answer.

A. I never made such a recommendation and I would never have.

Q. What is that? A. I would never have.

Q. Did you learn that the complaint was dismissed?

Mr. Hallinan: I object to this, your Honor. It has no relevancy, what he learned about what was done with——

Mr. Rosenblum: I think it is a case, if your Honor please, that he handled.

Mr. Hallinan: No. I will object.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception. I have no further questions.

Mr. Hallinan: I have no further questions.

The Court: All right, Mr. Sershen, thank you.

The Witness: Thank you.

Mr. Hallinan: With one quick check of my exhibits to make sure that they are all in, which I can do in a moment, the Government will rest, your Honor.

(818) The Court: All right.

Mr. Hallinan: The Government rests, your Honor.

The Court: All right. Well, now, I will ask you to go out in the juryroom for a few minutes and I will be educated on various matters that won't concern you.

(Jury retired.)

Mr. Rosenblum: This can be off the record. It is just a question of timing.

(Discussion off the record.)

Mr. Perry: I would like to note for the record, your Honor, that briefs are being prepared at the office.

The Court: On the motion?

Mr. Perry: Yes.

The Court: I will hear argument on the motion, whatever you want, because, as I see it, you are not prejudiced if we go ahead, and if you should win the motion you would be happy and you would be glad to have spent an extra half-day on a problem. But I want to save the time of this jury. Some of them are businessmen and they are being held away from their work and if this case goes on for several days, why, (819) there is a chance that they will be held beyond their usual term of service, and I don't think that is fair to just take liberties with their time.

Mr. Rosenblum: I can say, your Honor, that I am certain the case cannot go beyond this term. Our defense is not going to be a long one. The thought I had, I want to put it in in the particular order in which I feel it would protect the rights of the defendant. If I could even have conceived the fact that the Government would be able to really finish everything up today, because we were told one witness would be back this afternoon——

The Court: As a matter of fact, I don't know why—this is off the record.

(Discussion off the record.)

The Court: I will tell you what I am going to do, Mr. Rosenblum. We will take a brief recess, give you ten minutes to get squared away——

Mr. Rosenblum: Can we do this? Can we have the oral argument now?

The Court: He wants to prepare briefs.

Mr. Rosenblum: No. The briefs will be submitted tomorrow.

Mr. Perry: We can take the oral argument.

(820) The Court: Do whatever you want to do, Mr. Perry.

Mr. Rosenblum: Can I send for a witness in a little while? I think maybe——

The Court: Why don't you go ahead and get started with whatever you have?

Mr. Rosenblum: Can we send for a witness? I don't think it will take too long. I think we can get him.

The Court: All right. You go ahead and have Mr. Rooney send for the witness and Mr. Perry start the argument. I actually don't see much to it, if you are going to brief this thing, of arguing it now, but if you have your thoughts in mind, why go ahead.

Mr. Perry: Yes, Judge. Well, we have the thoughts in mind.

The defendant moves, your Honor, for judgment of acquittal at the end of the Government's case, and preliminarily to the discussion of the grounds for this motion, to take about two minutes, your Honor, just to have the statute clearly in mind and then go on with the argument. The statute says: "Whoever in any manner within the jurisdiction of any department (821) or agency of the United States knowingly and wilfully falsifies, conceals or covers up by any trick, scheme or device a material fact or makes any false or fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both."

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Now, your Honor, since the Government's case is closed and since I presume they have completed their offer of proof, I respectfully suggest, your Honor, that there is a failure of proof as to two items which are part of the Government's case; one is there is no proof that the defendant—the Pennsylvania Exchange Bank is a fiscal agency entrusted with any duty of responsibility to the Treasury; secondly, I say, your Honor, there has been no evidence offered which shows that the matter in issue is "Any matter within the jurisdiction of any department or agency of the United States."

I say, your Honor, in my judgment, to satisfy the statutory requirement in that regard there should be some statute or regulation before the Court which (822) would show proof that the fiscal service of the Treasury is actually a department or agency that has the matter involved within its jurisdiction. Failing that, I would say it has failed to satisfy the requirements of the statute.

Going beyond that, I would say, your Honor, that these letters were mailed from New York City and that they were received, two in Washington, D. C., and one Chicago, Illinois. Now we have briefed the cases; we are familiar with the cases, and my impression is that there is a split, one Circuit holding one way and another Circuit holding another way. But on the basis of the authority that exists, one of the cases being a Supreme Court decision, I respectfully suggest that the venue is not properly laid in this case.

The Court: Venue, you say, is where? In the office that received the letter?

Mr. Perry: Yes, where the letter is received.

(To Mr. Hallinan) That is the Valenti case, is that right?

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Mr. Hallinan: It certainly isn't. It was a Circuit court.

Mr. Perry: Perhaps it was a Circuit Court (823) decision.

But, in any event, there is a decision, and it is being briefed in our brief, which would support the argument that jurisdiction is not properly laid in the Southern District.

The Court: This point of venue hasn't been raised by motion——

Mr. Perry: No, Judge.

The Court: —prior to this?

Mr. Perry: No. I am glad you raised that because I want to have the record clear on that.

When we asked for a bill of particulars in this case we did ask for information as to whether the representations were oral or written. We did not get that answer in the bill of particulars.

Now, on about September 17th, 18th and 19th, around those dates, pursuant to a subpoena duces tecum, letters were made available to us. However, we had no knowledge at that time that the basis for these representations were these letters or were oral statements. We did not know in fact just what the Government's case was in that regard until the opening. We had no information whatsoever prior to that time upon which we could preface a motion (824) that venue was improperly raised. I do want that in the record to explain why there has not been an earlier motion.

Now the other grounds that we are moving on, your Honor, is that the first count charges that the defendant did make a false statement in that he said that the bonds were cashed in accordance with the circular letter, whereas the indictment goes on.

to say, "In truth and in fact the bonds were not cashed in accordance with the circular letter."

(825) Your Honor, if you examine that letter—the letter is the letter of December 26, 1951—the moving part which the Government has taken as the basis of the first count reads as follows:

"At the time the investigation was made by your Department we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against you."

Now, I respectfully suggest to the Court that the statement as proved is different from the statement as alleged in the indictment with the consequence that the crime charged in the indictment has no proof to support it.

Now, I say this to your Honor by way of illustration and if your Honor will forgive me for using your name—Mr. Milenky and Mr. Hallinan and I were discussing this out in the corridor this morning—this count would be very much as if I were to say to Mr. Hallinan that Judge Walsh told me there would be no court on Friday. Whether or not there was court on Friday is not the point in issue. The point in issue is whether Judge Walsh told me that.

So I say a charge of a false statement based (826) upon this letter of December 26, 1951, should have said that the defendant did say that he was informed that the bonds were properly cashed, whereas in truth and fact he was not so informed. That, in my judgment, would be the way the count would have had to be pleaded to be consistent with the letter which allegedly is the basis of the charge. As it is now charged in the indictment, the representation alleged to the defendant is that he said the bonds were properly cashed whereas in truth and fact

they were not properly cashed, and that I respectfully suggest to your Honor is not what is represented in the letter and I suggest it may not support the count as charged.

Similarly with the second count. The second count is dated April 4, 1952, and that has reference to a letter of that date sent by Mr. Miller to the Treasury Department.

The indictment, the second count of the indictment, is virtually in identical terms, your Honor—well, as a matter of fact, it is identical with the first count except as to the date. The second count is April 4; the first count is December 26, 1951. Other than that the counts are identical.

Now, again, too, in the second count the charge (827) is that the defendant did make a false statement that the bonds were properly cashed in accordance with Treasury Department procedure, whereas in truth and fact the bonds were not so cashed.

There, too, your Honor, I would say the evidence adduced by the Government does not establish the crime charged in the indictment; in other words, the letter which is the basis of the count does not support the count because here, too, the letter reads as follows in its moving part:

"We regret that you are insisting on reimbursement because we feel that these bonds were cashed in good faith and within the meaning, letter and spirit of paragraph 4 of the Treasury Department circular covering such redemptions dated December 19, 1947."

I would say to have a charge of a false statement in this regard the charge should be that Miller represented that he had a belief that the bonds were properly cashed in good faith and within the mean-

ing, letter and spirit of Paragraph 4, whereas in truth and fact he did not have such a belief. That I would think would be the way the count should be charged.

For those reasons, your Honor, I ask in particular that the first and second counts be dismissed.

(828) The Court: How about the third count?

Mr. Perry: That comes in the general motion made at the beginning. The third count does not charge anything about circular letters. It is causing a false statement to be made to the effect of the Chernoff identification. That is in a different category.

The Court: It is under your general motion but not specifically?

Mr. Perry: Yes.

The Court: All right.

Mr. Hallinan: I will address myself briefly to each of the three contentions made by the defendant. The first is that this does not came within the statute because there has been a failure of proof. I think your Honor can take judicial notice of the fact that United States Savings Bonds are within the jurisdction of the United States Treasury Department, and I think from this record your Honor can conclude—would have to conclude as a matter of law on this particular argument that these people were indeed paying agents. Mr. Heffelfinger and Mr. Miller dealt on that basis.

The Court: What does the bond say on its face——

Mr. Hallinan: The bond says on its face—would you like to see it? It says, "United States of (829) America" and then describes the bond (handing to Court).

The Court: Have you got one where I can read the back, too? I might as well read it all at once.

Mr. Hallinan: I think one of those would be legible (handing to Court).

The Court: All right.

Mr. Hallinan: I am not going to argue any further.

The Court: I don't think you have to. The bank did send the bonds to the Federal Reserve Bank and did get money on the bonds.

Now, what else do you want to say?

Mr. Hallinan: The venue question boils down to this: They say that the venue should be either in Washington or Chicago and not here. They cite the Valente case, and if my recollection is correct, I think that is 175 Fed. 2d.

I would point out to your Honor—your Honor will become familiar with it—but there was a dissent. It was 2-1 in the Valente case.

Recently in 218 Fed. 2d the case of United States v. De Rosier, the facts were as follows:——

The Court: What circuit?

Mr. Hallinan: Down in Florida.

(830) The Court: Anything in the Second Circuit?

Mr. Hallinan: Not squarely on this point, your Honor, no. The facts in that case—and I might say the decision commented on the Valente case and distinguished it—the facts briefly in the DeRosier case are a man was being investigated by a loyalty board, the Post Office Loyalty Board. He was in Florida. He mailed from Florida, Hialeah, Florida, to Washington, D. C., a document containing false statements. They tried him in some district in Florida, I think the Southern District of Florida; he was convicted; he appealed. One of the primary

contentions he made on appeal was that venue was properly in Washington, D. C. not in Florida.

We rely upon, and the Court in that case relied upon, Section 3237 of the United States Code which reads in pertinent part as follows:

"Except as otherwise expressly provided by an enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed."

The facts in the De Rosier case are on all (831) fours with the facts in this case. We say that the crime began here when the letters were placed in the possession of the United States Post Office. The Valente says in its reasoning: But the crime might never have been completed because the letter might have been lost on the way to Washington. And we, in so far as that reasoning is used, say that is right, and the DeRosier case recognizes that. The letter might very well be lost and then you would have no completed crime, but that does not detract from the case, as the De Rosier case recognizes. The crime begins once some effective means is taken of putting those statements out of the possession of the defendant. That happened when they were placed in the possession of the United States Post Office.

I have cited in my brief, I think, the paragraph that—just let me read part of it:

"It would be an excess of literalism to say that the appellant was only preparing to commit the offense, and the actual commission thereof had not in fact begun at the time and place from which the letter was sent, mailed, or forwarded, to the Board.

It is no answer to say that, by some fortuitous circumstance, the consummation of the crime might have been frustrated by the loss of the letter in transit, thereby rendering (832) ineffectual the attempt to deliver the false statements. Necessarily, the commission of the offense must be viewed in retrospect. It is often not easy to draw a line between attempt and preparation; the former is such an intentional preparatory act as will apparently result, if not extrinsically prevented, in a crime which it was designed to effect."

I am not going to say much either, your Honor, on the letters. I did not prepare a memo of law because I feel honestly that that is one error where a hundred million cases will not assist your Honor in determining this question. I think whether or not the two statements in the two letters referred to, Exhibits 22 and 23, constitute false statements is a question of fact for the jury.

With respect to Government's Exhibit 22, which is the letter of December 26, 1951, I put on certain witnesses to prove as a fact that he had not been informed. So I say this statement that he makes as I said to your Honor before, is a very cute or clever way of saying to the Treasury Department, "These bonds were cashed in accordance with Treasury Department circular."

I think a false statement can be made in many (833) ways. I think whether or not this constitutes a false statement is purely in the area of a question of fact for the jury to determine.

The Court: There are two questions. It may well be they are not necessarily to be decided.

The first question is whether the conduct comes within the section. The second is whether it comes within the allegations of the indictment.

Now, the section is much broader than the indictment. There are any number of deceitful acts which are covered by that, but for some reason the indictment specifies a false and fraudulent statement as to a material fact and states that the fact was that these bonds were cashed in accordance with certain procedures.

Now, Mr. Perry emphasizes the alleged variation between the literal language of the letter in Count No. 1 and the allegations of the indictment. Now, what is the rule as to conformance of such allegations with the proof? I am not at all sure I would want to rely on it or that it is necessary, but as a matter of general curiosity I wonder if you have explored that.

Mr. Hallinan: No, I have not, your Honor, because my opinion has been all along what it is today, (834) that whether or not this constitutes a false statement within the indictment depends on determining what the man was saying in this particular sentence, and that seemed to me to be purely a question of fact.

The Government, having shown that he was not informed, what was he saying to the Treasury Department here? He was saying simply and shortly in a manner different and more evasive than a flat and unequivocal statement, but he was saying nonetheless to the Treasury Department, these bonds were cashed properly.

As your Honor knows, I have briefed many areas of the law here which I did think would present your Honor or myself with problems, but this one I did not go into at all because I felt it was an area where law could not help, that it was purely a question of fact.

The Court: Well, if we are faced with the question that Mr. Perry presents it may be so, but I was wondering before we got into that whether we were faced with that or whether there was any procedural step to be taken now which avoid the resolution of that question.

(835) Mr. Perry: Your Honor is aware that there is a question of immaterial variance. If I am alleging a date as of April 2 and the proof shows April 3, that of course would not affect the validity of the count, but we are not dealing here, I respectfully suggest, with any question of an immaterial variance. What we are confronted with, your Honor, and I have been interested in the way Mr. Hallinan was explaining it to you, he took a lot of words to say, "This is another way for the defendant to say this. He said it evasively, he did this, that, the other thing."

As a net result of listening to Mr. Hallinan you can appreciate that he is aware—at least he is aware now—that the defendant did not say what is charged in the indictment. He says that is the result of what he said. That may be, but that is not what he said in the indictment.

The Court: Forgetting the question as to whether it is covered by the statute, just on the question whether there is a material variance as to the indictment, I was wondering if, as far as the adequacy of the pleading is concerned, it is not enough that you knew what the representation was and that you were not (836) taken by surprise with respect to what they thought came within the statute.

In other words, just for the sake of argument, if we assume that the language of the indictment does not constitute a literal description of the letter relied on to prove it, I would wonder whether that

would be a material variance anyhow because you obviously knew what statement the indictment talked about. Its significance as a matter of law turns upon the language of the statute rather than the indictment.

Mr. Perry: Except as to the extent that an indictment, as your Honor well knows, frames the charge and all the defendant is called upon to do is to meet the charge, and if he meets the charge the fact that you may have shown him guilty of another crime does not transpose over and prove him guilty of the crime charged in the indictment.

The Court: In other words, what you are saying is the variance is material.

Mr. Perry: Frankly, Judge, this has been researched. I made it clear to your Honor we have not been luxuriating in the letters. We have only had (837) them a short time.

Mr. Hallinan: September 19.

Mr. Perry: It may be. But it was not until the opening that it was made clear to us that the letters were the basis of the indictment. There is no way of our telling. We have been having this thing researched and I would expect to provide your Honor with—I have not had time to do it myself, but I would expect to provide you with some authorities.

The Court: All right. I will wait for your authorities on that, if that suits both of you. You can both get me some. Even though you think it is ultimately going to be a question of fact, and I assume you cannot find anything dealing with this statute in particular, ordinarily it helps to know what the statute is about, what its legislative history is, what it is aimed at. I do not expect you to be able to give me the general authorities as to what

variance in language is too great and what is not. That is the sort of thing that is usually not worth very much because each case is so different from each other, but I would appreciate whatever you can tell me about the section.

Mr. Perry: Your Honor, may I answer for the (838) record, if not for your Honor?

The Court: Yes.

Mr. Perry: Mr. Hallinan said insofar as this being a matter within the jurisdiction of the Department or agency, that your Honor may take judicial notice. I very respectfully suggest that the question of whether or not this is a matter within the jurisdiction of the agency is one of the elements of the crime, and I will establish that in a second. It is one of the elements of the crime, and proof in a criminal case cannot be taken by judicial notice that one of the elements of a crime may or may not exist.

The Court: You go ahead and get your authorities for me on any of these points. I won't definitely conclude any of them until you get your brief in. I assume it is going to be in the next day or so.

Mr. Perry: God willing and my health holding up.

The Court: You look in good health.

We will take a five-minute recess. If your witnesses come in, let me know right away.

(Short recess.)

(839) (The following proceedings were held in the absence of the jury, at the bench.)

The Court: As I understand it, the next two witnesses are going to deal with the testimony of Mishel as to burnt money. That is going to get us into the question as to the proper scope of the defense, and I thought we would go into that now,

because if we have any fundamental differences of theories on that that we ought to resolve them.

Mr. Rosenblum: Your Honor, you said that this would be a mater of defense and we would have to call them in that order. Mr. Hallinan submitted a memorandum in which he said: I ask your Honor, I tell you the reason why I feel that the Government's case should come in without any attempt on the part of the attorneys for the defendant to bring out such matters and on which we are now making them their own witness.

The Court: We come to the next step. The question is, if you intend to prove, just assume for the sake of argument that somehow having that safe deposit box—this is completely ridicuious or probably a ridiculous assumption, but having that safe deposit box with Miller and Mishel jointly constitute a defense, then I say if you want to (840) buttress Mishel's testimony that you could produce witnesses on the defense to do it, but if all you do on cross-examination is develop from Mishal something which you say is a lie on a collateral matter, then you can't call witnesses on the defense to knock down the lie that you developed on cross.

Mr. Rosenblum: No. The second question, Mr. Mishel came back and added something, and I asked to strike it out but you would not. You said, "I am going to let that stand." I asked one question. There was an answer, all of a sudden we get back in return a long statement and, "I can't answer that yes or no, I must answer in my own way." I said, "Can't you answer yes or no?" You said, "I am going to let him answer it in his own way." Let us assume that he at that time said——

The Court: Because I didn't think it was that

kind of a question. This information didn't come out on one of those.

Mr. Rosenblum: Yes, I think it did. When he asked some question he came back and said something about the burned money.

The Court: This was after you had gone into the whole subject of the safe deposit box.

(841) Mr. Rosenblum: I think we have two separate things. We were discussing before the matter of burned money, if you recall. Now, talking about the safe——

The Court: That came in with the discussion of the safe deposit box. He said there was burnt money in there.

Mr. Hallinan: It came in in another way. The burnt money came in—I appreciated Mr. Rosenblum's position at that particular time. It was quite obvious, and I recognized it from the start. It was a dilemma for them. Mr. Rosenblum was trying to attempt to establish by extensive interrogation that Mishel was from 1945 to 1949 a businessman, a legitimate businessman. Quite a dilemma. I realize that. But in response to several of those pressing questions Mr. Mishel told him about the burnt money in the vault. I didn't develop the vault question at all. I objected at that time, I objected twice. And he went into the vault for the sole purpose of showing what a monstrous ridiculous lie this was. They can't set up a witness just to knock him down. They make the witness their own and they are bound; even if they don't make him their own witness they are bound on the collateral (842) matters.

Mr. Rosenblum: I think you will find there are a number of instances where the witness himself

brought in matters when you were questioning him. I wasn't responsible for it.

Mr. Hallinan: I will agree with that, but it has nothing to do with this. Those two matters were in perfect response, I have no doubt about that at all. I can go to the record and ascertain it. They were in perfect response to the question asked by Mr. Rosenblum.

The Court: In the absence of your showing me to the contrary in the record I won't be disposed to go into the proof on the safe deposit box or burnt money. If you want to support some collateral testimony of Mishel which you think develops your defense or if you have a defense that you want to prove unrelated to the truth or falsity of Michel, I am glad to go into it, but we are not going to go into collateral false testimony of Mishel.

Mr. Perry: I would add this, to the discussion at the bench. I am not sufficiently acquainted with the record that I document it by page number on what we were discussing. But leaving that aside for the (843) moment, in any case, of course, the conduct of the trial and the proof that is admitted to a very large extent rests in the discretion of the Court. I can appreciate that there are rules to be followed. I think your Honor will see in the memorandum that we submitted, after a quite exhaustive consideration of the cases, the net result of the discussion was that what is or what is not collateral, that, too, rests to a great extent in the discretion of the Court.

All of this, just to make the point, that I am leading up to is this: Mishel, without characterizing his testimony, presents a difficult witness to attack because of the refusal on his part, not questioning

motive, the refusal on his part to be pinned down better to specific acts and events but rather spreading them over a period of years. It is just literally impossible to show that a thing that isn't so. So that ultimately it becomes a question of his word as against the word of somebody who may deny it. That is the type of witness, in general, that he was.

Now there are several areas about which he did take a specific position. One area in particular (844) is this vault incident. And that happened back in 1953 I believe, around that time, 1952 or 1953, when he had the New York County District Attorney's Office take him up to the bank, where he came in with a key and said, "This is the key to my vault." Then they said to him, Where is the vault?" In the first place, the key, we could establish that has nothing to do with this bank. And, secondly, the place where he pointed to his box and said, "There," the number that box had, the number wasn't in proper sequence. That was checked. The Mosely Safe Company up on Fifth Avenue, your Honor, put the boxes in the bank, and those boxes have not been changed; they are there in the identical form that they were back when they were put in there years and years before Mishel was ever heard of. It is a thing like that. Your Honor might say, well, that is collateral. I am not going to argue that point. Perhaps it is collateral, if your Honor feels it is. Let us assume it is collateral. But, frankly, we ask the Court in its discretion to permit us to show that this man Mishel as of today, not 1953, when this happened, as of today is lying. We feel we can show it not by witnesses who may have an interest in the case but very cold (845) disinterested persons.

The Court: Well, that puts us in the awkward position of your having given Mr. Mishel—I mean, this whole discussion of that vault, as I remember it, was brought in out of nowhere on cross-examination, and I don't think that we can go to a situation where you tender a subject matter on which you expect a situation to lie on a collateral issue and then prove that he lied as part of your defense. We are here to try the material issues and not collateral ones. So I don't think I will take that testimony if those are the witnesses that we are waiting for.

Mr. Rosenblum: You recall there were a number of instances where a question was put that I thought was subject to a possible yes or no answer, and your Honor at that time said, when he said, "I would like to answer that in my own way, Step back, Mr. Rosenblum," as he directed me to, and you said, "He can answer it in his own way," and I said, if you recall, "I think it is susceptible to a yes or no answer," and you said, "No, I am going to overrule you." Then he brought in a number of instances matters which—let us assume that we (846) deem were collateral—but because your Honor permitted him to answer it in his own way and then he went into matters which you might now say are collateral——

The Court: I don't think you are going to find that that was the situation. In addition, I don't think you are going to find very many cases where the form of the answer was an issue between us or in any case where you ask me to strike that I didn't. There may have been one or two, but there were not many. There was a substantial part of of his cross-examination where I would have granted

a motion to strike at the time and where I would have stricken the answer if you had wanted me to. But I deliberately withheld any action pending your request because it seemed to me that you had a method in permitting him to act exactly as he did, and I didn't want to in any way disrupt your handling of a witness other than by a request of one of counsel.

Mr. Rosenblum: I don't know what you refer to when you say method in handling——

The Court: At one time you deliberately encouraged him to talk in a rambling fashion and I didn't interrupt.

(847) Mr. Rosenblum: No. These instances I was pointing to was where I insisted that he could answer "Yes" and your Honor said, "No, I will let him answer it in his own way."

The Court: There were one or two of those. I don't think this is one of them. As to Mishel, there was more than one or two. There have been a couple with other witnesses. But this wasn't one of them as I recall it. If you can show me in the record that it is, we will continue our discussion on that.

Mr. Rosenblum: You gave us, as you recall, the other day——

(To Mr. Hallinan) Do you want to answer that?

The Court: There is nothing for him to answer yet because I haven't——

Mr. Rosenblum: The other day you said you would make available to us the statement on Irving Mishel dated February 28, 1955. And I don't know whether you said you just wanted us to read it or wanted us to use it.

The Court: I said I gave it to you for whatever

request for relief you might see fit to base upon it, something like that.

(848) Mr. Perry: Does your Honor have in mind—I haven't discussed this with Mr. Rosenblum so I don't know what is in his mind—but does your Honor have in mind that perhaps we can offer it in evidence, or does your Honor want that we should recall Mishel?

The Court: All I did was read that document and conclude that its secrecy was not essential to the Government for any reason that its sole force would be exhausted in this lawsuit. Therefore it seemed to me that you were entitled to it as much as the Government, and I gave it to you for whatever you wanted to do with it. When you ask me to do something about it I will then pass upon the propriety of what you ask me to do.

Mr. Perry: I would do one of two things; either we offer it in evidence or we ask that Mr. Mishel, who is in the building, that we bring him up here so I can examine him on subject matter that is in here in the statement. I think I should cross-examine him or question him about it.

Mr. Hallinan: I will object to both the recalling of the witness and the introduction of this document in evidence upon the grounds that it would (849) have to be—the procedure would have to be on the theory that there is something in this inconsistent with the witness's testimony. If there is any inconsistency it is not with the tenor of what the witness was testifying to, and it is not of sufficient value, and from the Government's viewpoint many times—well, leaving that aside, it might be more prejudicial to the Government than it would to actually shed light upon this proceeding, as far as helping us to

determine the ultimate issues here. I don't think that it is inconsistent with the tenor of what the witness testified to from the witness stand.

I think, also, it does not reach the two cases that your Honor was referred to, the Krulewitch case and the Gordon case. If you will recall there, in the Krulewitch case, I think it was very similar to the Gordon case where certain people had not been implicated. The defendant had not been implicated up to a certain point. That is an inconsistency that goes to the very heart of the case.

The Court: Mr. Rosenblum, do you want to say something? I have heard enough from Mr. Hallinan.

(850) Mr. Rosenblum: Yes. I thought I would bring this to your Honor's attention. If you will recall, on the bottom of the first page, where Mishel says, in substance—well, I will read it so that I am not accused of using my own language.

"I bragged to Wissenfeld in the presence of Patrick Maeken, another prisoner, that the Miller case could not be tried without me and that I had the FBI and the Assistant U. S. Attorney in a position where I could embarrass them if they didn't keep their promise to me to go to Judge Mullen in General Sessions Court, New York County, to have my State sentence of 10 to 20 years reduced."

The Court: Then he goes on to say that there was no such promise and that this was an attempt to impress these two jail acquaintances.

Mr. Rosenblum: That is right. I thought it was a question for the jury to say whether or not even had he added the other part, having written—he said that he said something to the other witness and he said something to Wissenfeld. Then there are letters.

Mr. Perry: In here there is a reference to (851)

two letters he sent to the U. S. Attorney wherein apparently—I don't know; I read it hurriedly—wherein apparently he said that unless they come in and talk to them he is going to cause some trouble for them. Now he denies that he wrote it or he said Wissenfeld put him up to writing it. But I should think we would have to have those letters produced.

The Court: Those were the writs that Wissenfeld brought? He testified about those.

Mr. Hallinan: While they are looking for it, if your Honor will recall, in both the Krulewitch case and the Gordon case this one statement or series of statements made by one witness was the crucial testimony in the case.

The Court: I realize there is no comparison between this——

Mr. Hallinan: I mean, you can take Mishel's testimony out of this case and we still have a prima facie case.

The Court: I don't think we have to cross that bridge yet. The fact is that I feel that the letter is substantially consistent with Mishel's testimony on this very subject matter and I don't (852) think the subject matter was of the greatest materiality anyhow. But, in fact, he told us that he told a whole lot of untruths to his jailmates to impress them. He says in that letter that one of those untruths was the part that Mr. Rosenblum read. Now the important thing is that it was an untruth and I don't think we have—he said it was an untruth in the letter, he said it was an untruth here on the stand. That he adds to somewhat greater specificity to his untruth in the letter than he gave us on the stand I don't think is of sufficient materiality to bring him back, because in both he says it was an untruth. So I will deny both of your applications.

*Colloquy of Counsel*

Mr. Perry: On page 3, on the bottom of the letter he says: "While talking to Wissenfeld he kept telling me not to do anything for the authorities unless they did something for me first and Wissenfeld himself wrote in his own handwriting several letters which he told me to copy in my handwriting. Amongst those letters was a letter dated January 12, 1955, addressed to Mr. Good of the FBI asking for a list of FBI agents who interviewed me and in which it was stated"—and he has quotation (853) marks—"'All the FBI agents' promises mean nothing but conversation.' Jake told me that this would embarrass the FBI and they would have to do something for me. He composed a similar letter for me addressed to the U. S. Marshal. I have I believe at least two other letters drafted by Wissenfeld in his handwriting which are addressed to other agencies."

As I read that letter, he has sent letters out——

The Court: He said he has two letters by Wissenfeld addressed to other agents. I don't know whether he sent them or not.

Mr. Perry: I don't know about that. But he certainly did send a letter addressed to Mr. Good of the FBI.

The Court: I don't think that adds anything to the value of the statement at all or as to the development of any inconsistency with his testimony.

Mr. Perry: It goes to bias and interest of the witness. Judge, even if he doesn't have a blessed promise to do anything for the man, still, if it is his belief that he got a promise from agents and if (854) he is trying to coerce the Government, perhaps unfairly, perhaps coerce them into doing something for him, I should think we could go into that meticulously, your Honor. We certainly didn't go into it——

Mr. Hallinan: The witness testified himself, and he made no bones about it. He hopes. He has the greatest hope in the world.

Mr. Perry: But if we can show back in 1955 he is writing letters to Government agencies saying, "Keep your promises to me,"——

Mr. Rosenblum: It is more than a hope. He has made a statement that they were promises.

The Court: The statements that he made, he says, in the very letter you want to cross-examine him, those he says were false statements. In other words, he says in that letter, "I made a false statement to Wissenfeld." That is the tenor of that letter. On the stand he told the jury that he told fairy tales to Wissenfeld. He has specified certain fairy tales here. He specifies slightly different ones there, or some with greater specificity there. But I don't think that is a material difference from his testimony, and I don't think (855) it would justify me in bringing him in now after the Government has closed its case, just on those alleged variances.

Mr. Perry: Judge, so far as the Government closing its case is concerned, I know your Honor would not penalize us for that because we have acted as promptly as we could. The witness was off the stand before this, it is a court exhibit——

The Court: I think I gave it to you, as I recall, yesterday morning.

Mr. Rosenblum: Yesterday.

Mr. Perry: But he was off the stand.

The Court: That is right. But I don't see that that is crucial either. I think that the heart of the matter is that it isn't worth the time of the Court to go any further with respect to this letter because I think it is in substance and in weight exactly what he gave here on the stand. So, now, I will deny your applications on that.

*Colloquy of Counsel*

Mr. Rosenblum: Exception.

The Court: Where are these witnesses?

Mr. Rosenblum: They are supposed to be on their way down.

Mr. Hallinan: As to Agent Sershen, do you (856) want to keep him around?

Mr. Rosenblum: Agent Sershen is here. There are a number of things I didn't go into because of your Honor's ruling that we can take up on the matter of the defense, going into greater detail about some of the things that occurred at the time he was with Mishel. If he intends to go back, maybe I can put him on now and question him.

The Court: Recall him now as a defense witness?

Mr. Rosenblum: Either that, or permit me to reopen it.

The Court: No. You can call him as a defense witness if you want to.

Mr. Rosenblum: May I have a few minutes? I haven't been out.

The Court: We have had an hour and five minutes now. As a matter of fact, he rested at about 2.30. It is an hour and a quarter.

Come on, get the jury in. Call the witness to the stand.

Mr. Rosenblum: If we put the defendant on the stand, tomorrow morning may I put on another witness that I intended to put in first?

(857) The Court: We will see what Mr. Hallinan says. I don't want any unfair spread between the direct and cross. We will see how that turns out.

Mr. Rosenblum: I will just cover as much as I can this afternoon on those things which I don't think I will be subject to cross.

The Court: We will see. Just go ahead.

(Jury in box.)

# VOL.

# II

No. 581

Docket No. 24457

# United States Court of Appeals

## FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

against

JAMES W. MILLER,

*Defendant-Appellant.*

JOHN T. [illegible] Clerk

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

S. D. N. Y. File No. C-146-97

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